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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 207

EMORY S. LAND (CHAIRMAN, UNITED STATES MARITIME COMMISSION); [illegible] (VICE CHAIRMAN, UNITED STATES MARITIME COMMISSION), ET AL., PETITIONERS

vs.

R. STANLEY DOLLAR, DOLLAR STEAMSHIP LINE, THE J. HAROLD DOLLAR ESTATE, COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED JUNE 19, 1946

CERTIORARI GRANTED OCTOBER 14, 1946

SUPREME COURT OF THE UNITED STATES

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EMORY S. LAND (CHAIRMAN, UNITED STATES MARITIME COMMISSION), HOWARD L. VICKERY (VICE CHAIRMAN, UNITED STATES MARITIME COMMISSION), ET AL., PETITIONERS,

vs.

R. STANLEY DOLLAR, DOLLAR STEAMSHIP LINE, THE J. HAROLD DOLLAR ESTATES COMPANY, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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1 In the District Court of the United States for the District of Columbia

Civil Action File No. 31468

R. STANLEY DOLLAR (AN INDIVIDUAL), 311 CALIFORNIA STREET, SAN FRANCISCO, CALIF.; DOLLAR STEAMSHIP LINE (A CALIFORNIA CORPORATION), 311 CALIFORNIA STREET, SAN FRANCISCO, CALIF., THE J. HAROLD DOLLAR ESTATES COMPANY (A CALIFORNIA CORPORATION), 311 CALIFORNIA STREET, SAN FRANCISCO, CALIF.; H. M. LORBER (AN INDIVIDUAL), 311 CALIFORNIA STREET, SAN FRANCISCO, CALIF., PLAINTIFFS

v.

EMORY S. LAND (CHAIRMAN, UNITED STATES MARITIME COMMISSION), 2500 MASSACHUSETTS AVENUE NW., WASHINGTON, D. C.; HOWARD L. VICKERY (VICE CHAIRMAN, UNITED STATES MARITIME COMMISSION), 4420 DEXTER STREET NW., WASHINGTON, D. C.; EDWARD MACAULEY (MEMBER OF THE UNITED STATES MARITIME COMMISSION, 3139 DUMBARTON AVENUE NW., WASHINGTON, D. C.; JOHN M. CARMODY (MEMBER OF THE UNITED STATES MARITIME COMMISSION), 2101 CONNECTICUT AVENUE, NW., WASHINGTON, D. C.; RAYMOND S. MCKEOUGH (MEMBER OF THE UNITED STATES MARITIME COMMISSION), DEPARTMENT OF COMMERCE BUILDING, WASHINGTON, D. C., DEFENDANTS

Complaint for injunction, mandamus and other relief

Filed Nov. 6, 1945

The plaintiffs for their cause of action allege:

1. That, this cause of action arises under the Constitution and laws of the United States [the Fifth Amendment to the Constitution of the United States], section 207 of the Merchant Marine Act, June 29, 1936, C. 858, Title II, section 207, 49 Stat. 1988, as amended June 23, 1938, c. 600, section 2, 52 Stat. 954, as hereinafter more fully appears.

2 2. That, the value of the rights which plaintiffs in this suit seek to protect and the value of the property and property rights and the extent of the injury involved herein exceeds three thousand dollars.

3. That the plaintiffs are all citizens of the United States.

4. That, the plaintiffs, R. Stanley Dollar (an individual), H. M. Lorber (an individual), are all residents of the state of California and maintain their business offices at 311 California Street, San Francisco, Calif.

5. That, the plaintiffs, Dollar Steamship Line (a California corporation), the J. Harold Dollar Estates Company (a California corporation), are all residents of the state of California and maintain their business offices at 311 California Street, San Francisco, Calif.

6. That, the plaintiff, Dollar Steamship Line, is a corporation organized and existing under the laws of the state of California, with its principal place of business located at 311 California Street, San Francisco, California, and said plaintiff is and has been for over fifty years engaged in the shipping business.

7. That, the J. Harold Dollar Estates Company is a corporation organized and existing under the laws of the state of California, with its principal place of business located at 311 California Street, San Francisco, California, and said plaintiff is engaged in the operation and maintenance of properties.

8. That, the defendant, Emory S. Land, is a citizen of the United States, a resident of the District of Columbia and resides at 2500 Massachusetts Avenue NW., Washington, D. C.; Howard L. Vickery, Vice Chairman of the United States Maritime Commission, is a resident of the District of Columbia and resides at 4420 Dexter Street NW., Washington, D. C.; Raymond S. McKeough, Associate member of the United States Maritime Commission, upon information and belief, is a resident of the District of Columbia, address unknown; Edward Macauley, Associate member of the United States Maritime Commission is a resident of the District of Columbia and resides at 3139 Dumbarton Avenue NW., Washington, D. C.; and John M. Carmody, Associate member of the United States Maritime Commission, is a resident of the District of Columbia and resides at 2101 Connecticut Avenue NW., Washington, D. C., in which capacities said defendants are charged with the administration of the shipping laws of the United States.

9. That, in the period of four years prior to 1928, the predecessor in interest of the party plaintiff, the Dollar Steamship Line (a corporation) was engaged in a round-the-world freight and passenger steamship service, operating vessels purchased from the United States and successfully operated for that purpose without the benefit of governmental subsidy or public aid of any character.

10. That, in 1928, the predecessor in interest, the Dollar Steamship Line Inc., Ltd., a Delaware corporation (now the American President Lines, Ltd.), initiated an enterprise in trans-Pacific trade and a further development of its round-the-world service, and in conjunction therewith entered into contracts for the construction and acquisition of two trans-Pacific lines and entered into contracts with the United States, represented

by the United States Shipping Board, from which funds were borrowed and obligations assumed for the purpose of enabling the Dollar Steamship Lines, Inc., Ltd., to complete said vessels, and contracts were entered into with the United States for the carriage of mails.

11. That, this enterprise of the Dollar Steamship Lines, Inc., Ltd., was entered into upon reliance on these contracts with the United States, and the obligations were assumed, the vessels constructed and service initiated and developed in reliance thereon.

12. That, said vessels were completed and said steamship service maintained in accordance with the law and the obligations of the company continuously until June 30, 1937, when the United States cancelled its contracts with the company for the carriage of the mails, upon which the company had faithfully relied in the construction of said vessels and instituting, maintaining and developing said service. Effective June 30, 1937, Congress cancelled all Ocean Mail Contracts and in lieu thereof provided, for direct operating-differential subsidies to equalize construction and operating handicaps of American operators. However, the Maritime Commission refused, except on impractical conditions, to grant the company an operating-differential subsidy in substitution for the cancelled mail contracts as provided by law.

13. That, notwithstanding the cancellation of added mail contracts and the withdrawal of Government aid in this form, the company continued to maintain service without Government aid or assistance in any form until January 25, 1938, when the United States Maritime Commission for the first time granted to the company a temporary operating differential subsidy in pursuance of an operating differential subsidy contract between the company and the Commission of that date. Said operating differential subsidy contract was granted, solely on the condition acceded to by the company that its capital be increased in the sum of five hundred thousand dollars, and upon the further condition that the claims of all trade creditors of the company be satisfied by only twenty percent in cash and the balance by preferred debenture obligations and preferred stock of the company.

14. That, in addition the said operating differential subsidy was conditioned upon the release of other debts owing by the company in exchange for preferred stock thereof. To accomplish this purpose the company was compelled to and did enlarge its capital by the creation of four million dollars in par value of preferred stock, which was issued in exchange for said additional capital contributed and for the release of said obligations.

15. That, on and after January 25, 1938, the issued and outstanding stock of said company was as follows:

34,243 shares of preferred stock of the par value of $100 each
252,000 shares of A stock
2,100,000 shares of B stock

2,386,243

16. That, at that time plaintiffs and the predecessor in interest of the plaintiffs were the owners of 14,304 shares of said preferred stock, 2,100,000 shares of B stock and 113,206 shares of A stock, or a total of 2,227,510 shares.

17. That, at the time said operating differential subsidy contract was entered into with the United States, the company claimed and asserted that said subsidy was inadequate and insufficient in amount and in that respect failed to conform with the provisions and requirements of the shipping laws of the United States and in particular the Merchant Marine Act of 1936.

18. That, nevertheless the company was compelled to make said contributions to capital, reorganize its capital structure and accept said insufficient operating differential subsidy in the amount allowed by the United States Maritime Commission, or face the inability to carry on its operation and maintain service and meet its obligations as they accrued.

19. That, upon the expiration of said operating differential subsidy contract, on July 25, 1938, the said United States Maritime Commission failed and refused to extend the said operating differential subsidy contract or to enter into a new operating differential subsidy contract with the company, although the said Commission well knew that the company would be financially unable to carry on its operations and meet its obligations as they accrued without Government assistance as authorized by law, in accordance with the provisions of the said Merchant Marine Act of 1936.

20. That, no other or further contract or operating differential subsidy was granted to said company and no new contract for that purpose was made until August 15, 1938.

7. 21. That, the said United States Maritime Commission notified the company that no further operating differential subsidy or contract, therefore, would be made with it, unless and until it should comply with certain demands, including a demand that it enter into a contract in the form hereinafter set forth, providing, among other things, that certain of the stockholders of the company, that is, the plaintiffs and their predecessors in interest, should transfer to the United States Maritime Commission contrary to the express provisions of the shipping laws of the United States, shares of A and B stock held by the plaintiffs. Said shares so held by said shareholders, the plaintiffs herein,

represented 92% of the voting control and the management of the company.

22. That, the company was then and there faced with the alternative of executing and surrendering the said shares of stock or faced the inability of meeting their obligations as they accrued including obligations to the United States itself.

23. That, accordingly acting under the intimidation and threat of bankruptcy and the inability to meet its obligations, including obligations to the United States itself, the company was involuntarily forced to and did enter into said contract of August 15, 1938, a full, true and correct copy of which is annexed hereto as exhibit A and is expressly incorporated herein and made a part hereof as set forth in full.

24. That, after said contract had been fully executed between the United States Maritime Commission and the plaintiffs
8 said Maritime Commission amended said contract and entered into a supplemental contract with the plaintiffs on August 19, 1938.

25. That, said contracts were entered into pursuant to section 207 of the Merchant Marine Act of 1936, as amended, which section reads as follows:

"The Commission may enter into such contracts, upon behalf of the United States, and may make such disbursements as may, in its discretion, be necessary to carry on the activities authorized by this chapter or to protect, preserve, or improve the collateral held by the Commission to secure indebtedness, in the same manner that a private corporation may contract within the scope of the authority conferred by its charter. All the Commission's financial transactions shall be audited in the General Accounting Office according to approved commercial practice as provided in the Act of March 20, 1922, ch. 104, 42 Stat. 444: PROVIDED, That it shall be recognized that, because of the business activities authorized by this chapter, the accounting officers shall allow credit for all expenditures shown to be necessary because of the nature of such authorized activities, notwithstanding any existing statutory provision to the contrary. The Comptroller General shall report annually or oftener to Congress any departure by the Commission from the provisions of this chapter. June 29, 1936, c. 858, Title II, 207, 49 Stat. 1988; June 23, 1938, c. 600, 2, 52 Stat. 954."

26. That, the operating differential subsidy granted to the company upon the execution of the said contracts of August 15, 1938, and August 19, 1938, exceeded in amount the temporary subsidy granted to the company in the first six months of that year, thus demonstrating that the United States Maritime Commission had created the financial distress of the company not only by denying

the company the benefit of an adequate operating differential
9 subsidy contract from July 25, 1937, to January 25, 1938, but by granting an inadequate and insufficient subsidy for the following six months period.

27. That, thereafter, the company's operations were profitable and by virtue of an adequate subsidy contract and favorable trade conditions the company was enabled to and did thereafter pay and discharge all of its financial obligations, including all debts of the company and all of its obligations to the United States.

28. That, after the execution of said contracts of August 15, 1938, and August 19, 1938, the plaintiffs and their predecessors in interest caused said shares of stock of the company to be transferred to the United States Maritime Commission.

29. That, although such transfer was in fact and in legal effect collateral security for the indebtedness of the company to the United States Maritime Commission, nevertheless after the satisfaction of all of said debts and obligations to the United States, the defendants have asserted and claimed, and do now assert and claim that the United States is the lawful owners of the shares of stock so transferred by the plaintiffs to the United States Maritime Commission.

30. That, the indebtedness of the company to the United States for which said shares were transferred as collateral security, amounted to approximately $7,500,000 in principal amount, all of said amount having been fully satisfied and accordingly the indebtedness for which the stock has been transferred as collateral no longer exists.

10 31. That, the contract between the plaintiffs and the United States Maritime Commission was unauthorized and prohibited by express provisions of the Merchant Marine Act of 1936, as amended.

32. That, said contracts therefore are unenforceable, that no legal rights of either party could be effected under said contracts, that said contracts are void for all purposes and effects, and that the United States Maritime Commission could not acquire legal title to the plaintiffs' stock pursuant to the terms of the illegal agreements.

33. That, the plaintiffs allege that there now is in the possession of the defendants 2,386,243 shares of corporate stock in the name of the American President Lines, Ltd., a corporation existing under the laws of the state of Delaware, the legal title thereto being vested as a matter of law in the plaintiffs, which the defendants refused to return or deliver to said plaintiffs although formal demand has been made upon them, which stock the defendants are unlawfully retaining and are about to sell at public

offer to third parties, to the irreparable damage and detriment of the plaintiffs' legal right to said stock.

34. That, the plaintiffs made demand upon the Maritime Commission for the return of said stock in July, 1945. This request was denied by the Maritime Commission in July, 1945. Thereafter plaintiffs requested reconsideration of the matter which was granted. However, on November 5, 1945, the plaintiffs were informed that the stock will not be returned to the plaintiffs, and the plaintiffs assert, on information and belief, that the said stock will be sold on or before November 10, 1945.

11 35. That, defendants in total disregard for the rights of the plaintiffs unlafully warranted prospective purchasers of said stock, that said defendants would, if litigation developed in the unlawful sale of the stock by the defendants, reimburse such purchasers in cash from the funds of the United States, such monies as said purchasers had deposited with the defendants for the purchase of said stock, contrary to law.

36. That, the plaintiffs therefore are obliged and forced under the circumstances to restrain said defendants without benefit of notice from consummating the proposed illegal sale and disposition of the plaintiffs' stock, as said sale and disposition would constitute an irreparable injury and loss to the plaintiffs.

37. That, the plaintiffs have a legal right to the stock which must be protected against the tortorous invasion by officers of the United States Government, acting not only in excess of the powers validly conferred under the provisions of the Merchant Marine Act of 1936, as amended, but by actions which directly contravene the provisions of said Act.

38. That the plaintiffs have no adequate remedy at law.

39. That, if the plaintiffs be denied the relief requested herein, this honorable court will be giving effect to an unauthorized, illegal, void and unenforceable contract between the immediate parties, contrary to public policy, the constitution and laws of the United States.

12 Wherefore the plaintiffs being without a remedy in the premises, except in the court of equity pray judgment as follows:

1. That a temporary restraining order be issued immediately against the defendants and each of them, their agents, assistants, deputies, and employees, and all persons acting or assuming to act under their direction, enjoining and restraining them until the further order of the court from selling, offering to sell, disposing or offering to dispose of the plaintiffs' stock consisting of 2,386,243 shares of the American President Lines, Ltd., which stock is now in the possession and custody of the defendants.

2. That the court take jurisdiction of this cause and the parties hereto and of the subject matter hereof and that a writ of summons may be granted to the plaintiffs to be directed to the defendants herein, requiring said defendants to appear on a certain day before the court, and then and there make full, true, direct and perfect answer to this complaint.

3. That this Honorable Court, immediately order and restrain defendants from selling the plaintiffs' stock illegally acquired and about to be illegally disposed of and that a permanent injunction issue out of and under the seal of this court, against the defendants, their agents, assistants, deputies and employees, and all persons acting or assuming to act under their direction, restraining and enjoining them forever from selling, offering to sell, disposing or offering to dispose of plaintiffs' stock and that said defend-
13 ants be directed and ordered by this court to return the plaintiffs' stock, now in the unlawful possession and custody of the defendants, to the plaintiffs, the lawful owners.

4. That plaintiffs have such other and further relief as the nature of the case may require and to the court may seem just and proper in the premises.

Clinton M. Hester,
CLINTON M. HESTER,
432 Shoreham Building,
Washington, D. C.,
Attorney for Plaintiffs.

[*Duly sworn to by J. Stanley Dollar; jurat omitted in printing.*]

14 *Exhibit A*

ORIGINAL CONTRACT BETWEEN PLAINTIFFS AND THE UNITED STATES MARITIME COMMISSION DATED AUGUST 15, 1938

This agreement dated August 15, 1938, by and between:

Dollar Steamship Lines, Inc., Ltd., a Delaware corporation, hereinafter referred to as Dollar of Delaware;

Dollar Steamship Line, a California corporation, hereinafter referred to as Dollar of California;

The Robert Dollar Co., a California corporation, hereinafter referred to as Robert Dollar Co.;

Admiral Oriental Line, a Washington corporation, hereinafter referred to as Admiral Oriental;

Pacific Lighterage Corporation, a Marine corporation;

Olympic Refining Company, a Washington corporation;

Dollar Wharf & Warehouse Company, a China Trade Act corporation;

Dollar Terminal Steamship Company, a Nevada corporation;

R. Stanley Dollar;

Keith R. Ferguson and Robert Dollar II, as executors of the estate of John Harold Dollar, also known as J. Harold Dollar, deceased;

H. M. Lorber;

The Anglo California National Bank of San Francisco, a national-bank corporation, hereinafter referred to as Anglo Bank;

Mortimer Fleishhacker;

Herbert Fleishhacker; and

United States Maritime Commission, hereinafter referred to as the Commission;

Witnesseth: The parties hereto are interested, directly and indirectly, financially and otherwise, in Dollar of Delaware, and deem the consummation of the Adjustment Plan respecting said company as hereinafter set forth to be mutually advantageous. Therefore, the parties hereto hereby adopt said Adjustment Plan, and agree that it shall be deemed to constitute, and shall constitute, an agreement by and between them, and in consideration of the agreements, covenants, commitments, undertakings, representations, and warranties therein set forth, and in consideration of the granting by the Commission of the five-year operating differential subsidy and the loan for repairs, rehabilitations and reconditioning therein referred to, subject expressly to the provisions of paragraph 23 of said Adjustment Plan, each of the parties hereto hereby respectively agree, with all reasonable dispatch, to do all of the things and take all the steps, acts, and proceedings, and execute and deliver all certificates, documents, instruments, and writings that it may legally do, take, or execute and deliver and that may be necessary or proper on its or his part to accomplish or facilitate the consummation of the transactions and deeds referred to and set forth in said Adjustment Plan. Said Adjustment Plan is as follows:

15. ADJUSTMENT PLAN—DOLLAR STEAMSHIP LINES, INC., LTD.

1. Dollar of California holds, or forthwith will acquire and hold, all of the issued and outstanding class B stock of Dollar of Delaware, which said stock consists of 2,100,000 shares and stands of record in the names of the respective parties hereinafter listed, and Dollar of California will transfer, or cause to be transferred, all of said stock to the Commission, or its nominee, free and clear of all liens and incumbrances:

	Shares
(a) Dollar of California	1,872,210
(b) Robert Dollar Co	227,790
Total	2,100,000

2. The following named parties hold, or forthwith will acquire and hold, the number of shares of Class A stock of Dollar of Delaware listed after their respective names, and each of said parties will respectively transfer, or cause to be transferred, to the Commission, or its nominee, free and clear of all liens and incumbrances, the respective number of shares so listed:

	Shares
(a) J. Harold Dollar estate	24,107
(b) R. Stanley Dollar	2,283
(c) H. M. Lorber	9,174
(d) Mortimer Fleishhacker	26,122
(e) Dollar of California	2,075
(f) Admiral Oriental	122
Total	63,893

3. All rights and interests of the pledgor in and to the following listed class A stock of Dollar of Delaware will be transferred to the Commission, or its nominee, subject to existing pledges, and during the existence of said pledges, the Commission, or its nominee, shall have the voting rights accruing to such stock and the pledgor and pledgees will duly execute and deliver to the Commission or its nominee, from time to time, whenever requested, irrevocable proxies, giving full, unrestricted and unlimited rights to vote all such stock:

	Shares
Herbert Fleishhacker	33,000

4. All rights and interests of the respective pledgor in and to the following issued class A stock of Dollar of Delaware will be transferred to the Commission, or its nominee, subject to existing pledges and subject to option agreements referred to in paragraph 5 hereof:

	Shares
(a) R. Stanley Dollar	33,600
(b) J. Harold Dollar estate	11,273
(c) R. Stanley Dollar, J. Harold Dollar estate, and Herbert Fleishhacker, jointly	6,660
Total	71,533

5. The Anglo Bank as pledgee and the respective pledgors of the class A stock referred to in paragraph 4 above, will execute and deliver option agreements respecting such stock which shall provide:

(a) For a period of five years from date, the Commission, or its nominee, shall have all voting rights accruing to the pledged A stock, and during such period no disposition shall be made of any such stock (other than by release to the Commission, or its nominee) except subject to the express right of the Commission to exercise all voting rights thereon, and during such period the pledgee, pledgors, and other holders of said stock will duly execute and deliver to the Commission, or its nominee, from time to

time, wherever requested, irrevocable proxies, giving full, unrestricted, and unlimited rights to vote all such stock.

(b) For a period of five years from date, the Commission, or its nominee, shall have the right, at any time, to purchase
16 and take over all rights and interests of the pledgee (including the rights and interests of the pledgee in and to all collateral then pledged) upon payment of a sum equal to the balance due on account of the loan for which the A stock is so pledged, and in such event to release said A stock from the pledge, and transfer said A stock to the Commission, or its nominee, free and clear.

(c) During the period terminating five years from date, the pledged A stock shall be released and transferred to the Commission, or its nominee, free and clear, upon receipt by the pledgee of payments on account of the loan equal in the aggregate to $2 for each share of such A stock so pledged, from any source or sources, except only from the proceeds realized from the liquidation of pledged collateral other than such A stock (including but not limited to any payments that may be made by the pledgor; or that may be made by the Commission, or its nominee, or their respective assignees); and during such period no disposition shall be made of any such stock (other than by release to the Commission, or its nominee) except subject to the express right of the Commission, or its nominee, to receive such stock free and clear when the aggregate of such payments on account of the loan equals $2 for each such share.

(d) For a period of five years from date, unless the A stock included in the pledge has been released and transferred to the Commission, or its nominee, free and clear, no other collateral securing the pledge shall be released from the pledge, except for full consideration (the determination of the loan committee of the pledgee in this regard to be conclusive) and no guarantee shall be released; and the Commission, or its nominee, shall have the right to full information respecting such pledge and all transactions affecting the same.

(e) A legend shall be stamped upon all certificates evidencing the stock covered by said option agreements, making appropriate reference to said agreements and to the transfer of rights and interests in and to said stock in accordance with paragraph 4 of this Adjustment Plan.

6. Dollar of Delaware will make cash payments to such of the parties hereto as may incur expense for stock transfer taxes in connection with the transfers above referred to, which payments shall equal the respective amounts of such expenses so incurred.

7. The management agreement between Dollar of California and Robert Dollar Co., dated June 22, 1926 (to which Dollar

of Delaware is the assignee of Dollar of California) will be terminated and cancelled by said parties. The matter of the adjustment or settlement of any rights and claims in connection with said contract as between Dollar of California and Robert Dollar Co. shall be handled by said companies by separate agreement on such basis as may be agreed to by and between them, but no obligations or liability shall be imposed upon or result or accrue to Dollar of Delaware or any of the other parties hereto by reason of such termination and cancellation.

8. Dollar of Delaware will take over and assume all leases of Robert Dollar Co. for offices, space, and premises acquired by Robert Dollar Co. and used by it in the performance of its activities as managing agent under and pursuant to said management agreement of June 23, 1926, exclusive of the office at Manila, P. I., in such manner that Dollar of Delaware shall assume no obligation to any landlord which shall be more extensive than the existing obligation of Robert Dollar Co. and so as to preserve and vest in Dollar of Delaware all rights, if any exist, against any landlord by reason of said leases. Dollar of Delaware will hold Robert Dollar Co. harmless by reason of any liability or obligations that it has or may have by reason of said leases which arose or may arise subsequent to January 25, 1938. For a period of six months from date Dollar of Delaware shall have the right but shall have no obligation to use and occupy the space in said premises at Manila, P. I., at the same rental which it has been paying therefore since January 25, 1938.

9. Dollar of California will acquire from Robert Dollar Co. clear and unincumbered title to all office furniture, furnishings, fixtures, and equipment now situate in the offices and prem-
17 ises referred to in paragraph 8 hereof, including said office at Manila, P. I., and also all other such property (if there should be any) which Robert Dollar Co. acquired for the purpose of handling its activities as said managing agent and which it now owns and holds, and also all automobiles so acquired, owned and held (including, but without limitation, the Chrysler automobile used by Robert Dollar in San Francisco), and Dollar of California will sell all said property to Dollar of Delaware, and Dollar of Delaware will purchase all of said property from Dollar of California, for the sum of $100,000, payable $35,000 in cash, and $65,000 in preferred stock of Dollar of Delaware at the par value thereof.

10. Dollar of Delaware will take into its employ all of the personnel of Robert Dollar Co. engaged in managing agent's activities. Robert Dollar Co. represents and warrants that it has no contracts of employment with any of said employees, nor has it any undischarged obligations or liabilities to any of said employees

which said employees were legally entitled to have had discharged on or prior to January 25, 1938, notwithstanding their employment continued after said date. Dollar of Delaware shall have no obligation to retain any of said employees, and shall have no obligations or liability to any of said employees in the event it hereafter should terminate their employment, except only such obligations and liability as may be imposed by law.

11. If Robert Dollar Co. obtains a modification of its existing lease for space in the Robert Dollar Building, San Francisco, between Robert Dollar Co. and the owners of said building, dated April 1, 1937, so as to include therein, without additional rental, the 3,460 square feet of space in the basement of said building which is being used for storage purposes, and so as to provide, at the expense of the owners of said building, for such changes in partitions and in the arrangement of the elevator court as Dollar of Delaware may desire, Dollar of Delaware will affirm and assume such lease, and such lease shall be duly approved by the Commission.

12. Dollar of Delaware, within six months from the date of this agreement, will relinquish all rights to the use of the name "Dollar," and all rights to use the Dollar flag and insignia. During such six-month period, unless said rights are earlier so relinquished. Dollar of Delaware will continue to have the right to use said name, flag, and insignia.

13. Dollar of California, Admiral Oriental, Pacific Lighterage Corporation, Robert Dollar Co., and Olympic Refining Co. will give such confirmations, receipts, releases, and agreements as may be deemed necessary or proper to foreclose any attack on transactions that have been had in connection with the debt adjustments referred to in the compilation entitled "Financial Readjustments in Dollar Steamship Lines, Inc., Ltd." and issued by the Commission under date of February 17, 1938, pages 22 to 25, inclusive.

14. The Commission and Dollar of Delaware will release R. Stanley Dollar and Dollar of California from all liability as makers, comakers, guarantors, or endorsers of the ship mortgage notes covering the steamships President Harrison, Hayes, Adams, Garfield, Polk, Monroe, Van Buren, Taft, Cleveland, Wilson, Lincoln, and Pierce in such manner as to preserve and protect the liability of Dollar of Delaware on said ship mortgages and the priorities of said mortgages, and Dollar of Delaware will do and take all action and proceedings and authorize, execute, and deliver all instruments and writings that may be necessary to accomplish such result or that the Commission may deem advisable for such purpose, and agrees that said releases shall not release or in any way impair its obligations under said notes or said mortgages securing the same, nor shall any credits be allowed or given thereon,

either as to principal or interest, by reason of the stock transfers or other consideration that may be received by the Commission under the terms and provisions hereof. The Commission and Dollar of Delaware will deliver to R. Stanley Dollar and Dollar of California such instruments as may be necessary or proper to evidence said releases. Appropriate endorsements to evidence said releases shall be made upon each of said ship mortgage notes on which R. Stanley Dollar and Dollar of California, or either of them, are makers, comakers, or endorsers, and said notes shall be deposited in escrow with instructions to the escrow holder to make the same available for inspection, upon directions of the Commission, or R. Stanley Dollar, or Dollar of California, to any parties, court, commissions, or other groups or bodies designated in such directions.

18 15. Dollar of Delaware will hold Robert Dollar Co., Dollar of California, Admiral Oriental, and their respective officers and directors, harmless from all liability that has or may hereafter accrue under that certain contract dated April 23, 1930, by and between Robert Dollar Co., Dollar of California, Admiral Oriental, and Dollar of Delaware, as parties of the first part and collectively referred to in said agreement as the Dollar companies, and Matson Navigation Company, Matson Navigation Corporation, Ltd., and Oceanic Steamship Company, as parties of the second part and collectively referred to in said agreement as the Matson companies, by reason of any actions on the part of Dollar of Delaware which have created or may hereafter create any liability of said Matson companies for which said Dollar companies, or their respective officers or directors, may be held accountable.

16. Dollar of Delaware will hold R. Stanley Dollar, personally and as an officer and director of Dollar of Delaware, harmless by reason of his personal guarantee of February 20, 1934, to London Steamship Owners' Mutual Insurance Association, Ltd., and will make application to said association to release R. Stanley Dollar from said guarantee, and if it should be necessary to accomplish such result Dollar of Delaware will undertake to obtain a surety company guarantee as a substitute for said personal guarantee of R. Stanley Dollar and if it should be able to obtain such substituted guarantee it will do so and thereby effect such substitution. If Dollar of Delaware should be unable to obtain such release within 90 days from the date hereof, R. Stanley Dollar thereafter shall have the right to give notice to said association that he withdraws all said personal guarantees.

17. Dollar of Delaware and R. Stanley Dollar, and Dollar of Delaware and H. M. Lorber, will give mutual releases of and from all claims based upon past transactions.

18. The Commission, the Anglo Bank, Dollar of California, Dollar Wharf & Warehouse Co., and Dollar of Delaware will take all action and proceedings necessary or proper to effect an extension of their outstanding Fillmore-Johnson mortgages for a period of one year, without amortization, and so as to provide that the rights of the mortgagees shall be limited to the collateral.

19. The Anglo Bank, Dollar Terminal Steamship Company and the Commission will take all action and proceedings and give all consents that may be necessary or proper to effect the cancellation of the indebtedness of Dollar of Delaware to Dollar Terminal Steamship Company. (See Compilation, p. 23 (c).)

20. The Anglo Bank and Dollar of Delaware will modify the agreement between them dated January 17, 1938, so as to provide that each of the dates in the amortization schedule set forth in paragraph 1 of said agreement be set forward six months.

21. Dollar of Delaware will take all steps and proceedings and will duly authorize, execute and deliver all formal applications that may be required by the Commission and by the Reconstruction Finance Corporation, and all mortgages, promissory notes, and other writings and instruments that may be necessary or proper to—

(a) Obtain a five-year operating differential subsidy from the Commission;

(b) Obtain a loan of approximately $1,500,000 from the Commission for the purpose of meeting the expense of repairing, rehabilitating, and reconditioning its vessels;

(c) Obtain a loan of not less than $2,000,000 from the Reconstruction Finance Corporation for operating capital; and

(d) Meet and comply with all requirements of the Commission and the Reconstruction Finance Corporation, as to security or otherwise, which may be imposed as conditions to granting said subsidy and said loan or loans.

19 22. The class A and class B stock to be transferred to the Commission, or its nominee, free and clear or subject to existing pledges, the option agreements relating to the class A stock to be transferred subject to existing pledges, and the instruments and writings necessary or proper to accomplish the objectives and results set forth in paragraphs 1 to 20, inclusive, shall forthwith be deposited in escrow and the same shall be delivered to the respective parties entitled thereto when and if the subsidy agreement referred to in paragraph 21 above has been entered into and the loans so referred to have been made, or firm commitments therefor have been obtained. In the event said subsidy agreement has not been entered into and said loans have not been made or firm commitments for said loans have not been obtained within sixty

days from the date hereof, each of the parties hereto shall have the right to demand and receive the return of all stock certificates, option agreements, and other instruments and writings which said parties have respectively so deposited in escrow, and in the event of any such withdrawal or withdrawals; the respective obligations of the parties hereto based or founded upon the terms and provisions of this agreement shall thereupon cease and terminate. Dollar of Delaware shall pay all escrow fees that may be incurred in connection with the above transactions.

23. It is expressly understood and agreed by and between the parties hereto that the Commission has and shall have no duties or obligations whatever to any of the other parties hereto except only such duties and obligations as it herein expressly assumes and agrees to meet and perform and such duties and obligations as it may expressly agree to meet and perform in said subsidy agreement and in any agreement it may enter into in respect of said loan for repairs, rehabilitation and reconditioning, and in this connection it is hereby expressly understood and agreed—

(a) That the Commission has not undertaken or agreed, and does not undertake or agree hereby, to enter into said subsidy agreement unless and until the findings and determinations required by law with respect to such subsidy agreement have been made by the Commission, and terms and conditions respecting such subsidy agreement have been arrived at by the Commission and the party or parties to the subsidy agreement;

(b) That the Commission has not undertaken or agreed, and does not undertake or agree hereby, to enter into any agreement with respect to a loan for repairs, rehabilitation, and reconditioning unless and until any findings and determinations required by law in connection with such loans shall have been made by the Commission, and the Commission and the parties to the loan have arrived at satisfactory terms and conditions;

(c) That the Commission has not undertaken or agreed, and does not undertake or agree hereby, to take any action with reference to the proposed loan of not less than two million dollars from the Reconstruction Finance Corporation for operating capital unless and until any findings and determinations required by law with respect to the subordination of any indebtedness to the Commission to the mortgage or mortgages securing said loan from the Reconstruction Finance Corporation have been made by the Commission, and that the only obligations of the Commission are to furnish the Reconstruction Finance Corporation such information concerning Dollar of Delaware as may be requested by the

Reconstruction Finance Corporation and in the possession of the Commission, and subject to the findings and determinations aforesaid and if the conditions of the loan are satisfactory to the Commission, to subordinate the existing indebtedness on the operating fleet of Dollar of Delaware which is owed to the Commission to the mortgage or mortgages securing said loan from the Reconstruction Finance Corporation;

(d) That the Commission shall have no duty or obligation to make any payments, loans, or advances whatever to Dollar of Delaware or to any creditor of said company or otherwise except only in such amounts and under such terms and conditions as may be expressly provided in said subsidy and loan agreements, nor shall it have any duty or obligation whatever to continue, or to provide for the continuation of the operations, or any part of the operations, of Dollar of Delaware except as may in said agreements be expressly provided, nor shall it have any duty or obligation to continue to hold any of the stock, or any interest in or to any of the stock, of Dollar of Delaware which it may acquire under the terms and provisions hereof or otherwise; and

(e) That the sole right of any party hereto under this agreement in the event a subsidy agreement is not entered into or the loans mentioned are not made or firm commitments therefor obtained shall be to terminate this agreement in accordance with paragraph 22 hereof.

In witness whereof, the individual parties, and Keith R. Ferguson, and Robert Dollar II, as executors of the estate of John Harold Dollar, also known as J. Harold Dollar, deceased, have executed fifteen counterpart originals of this agreement by affixing their respective signatures thereto (such execution of this agreement by said executors being subject to such confirmation by the court in said estate proceedings as may be required by law), and the other parties have caused such counterparts to be executed by their respective duly authorized officers or representatives.

DOLLAR STEAMSHIP LINES, INC., LTD.,
[SEAL] By ARTHUR B. FOOLE, *Vice President.*
Attest:
D. T. BUCKLEY, *Secretary.*

DOLLAR STEAMSHIP LINE,
[SEAL] By M. THOMPSON, *2d Vice President.*
Attest:
A. E. LANG, *Assistant Secretary.*

THE ROBERT DOLLAR CO.,
[SEAL] By H. M. LORBER, *Vice President.*

Attest:
ROBERT P. SEELEY, *Assistant Secretary.*
ADMIRAL ORIENTAL LINE,
[SEAL] By ROBERT DOLLAR II, *Vice President.*
Attest:
E. H. HALL, *Secretary.*
PACIFIC LIGHTERAGE CORPORATION,
[SEAL] By R. H. ANDERSON, *President.*
Attest:
L. C. ROSS, *Assistant Secretary.*
OLYMPIC REFINING COMPANY,
[SEAL] By PHILIP E. JOHNSON, *Vice President.*
Attest:
K. BRENDEL, *Secretary.*
DOLLAR WHARF & WAREHOUSE COMPANY,
[SEAL] By O. G. STEEN, *President.*
Attest:
J. A. TOGNETTI, *Assistant Secretary.*
DOLLAR TERMINAL STEAMSHIP COMPANY,
[SEAL] By H. M. LORBER, *Vice President.*
Attest:
E. C. KESTER, *Assistant Secretary.*

21 (Sgd.) R. Stanley Dollar,
R. STANLEY DOLLAR,
(Sgd.) Keith R. Ferguson,
KEITH R. FERGUSON,
(Sgd.) Robert Dollar, II,
ROBERT DOLLAR, II,
as Executors of the Estate of John Harold Dollar, also known as J. Harold Dollar, deceased.
(Sgd.) H. M. Lorber,
H. M. LORBER,
THE ANGLO CALIFORNIA NATIONAL BANK OF SAN FRANCISCO,
[SEAL] By P. E. HOOVER, *Vice President.*
Attest:
R. H. HOLMBERG, *Assistant Secretary.*
(Sgd.) Mortimer Fleishhacker,
MORTIMER FLEISHHACKER.
HERBERT FLEISHHACKER.
UNITED STATES MARITIME COMMISSION,
By REGINALD S. LAUGHLIN,
Special Counsel.

22 *Exhibit B*

SUPPLEMENTAL CONTRACT BETWEEN PLAINTIFFS AND THE UNITED STATES MARITIME COMMISSION DATED AUGUST 29, 1938

This agreement dated August 29, 1938, by and between Dollar Steamship Lines, Inc., Ltd., a Delaware corporation; Dollar Steamship Line, a California corporation; the Robert Dollar Co., a California corporation; Admiral Oriental Line, a Washington corporation, Pacific Lighterage Corporation, a Maine corporation; Olympic Refining Company, a Washington corporation; Dollar Wharf & Warehouse Company, a China Trade Act corporation; Dollar Terminal Steamship Company, a Nevada corporation; R. Stanley Dollar; Keith R. Ferguson, and Robert Dollar II, as executors of the estate of John Harold Dollar, also known as J. Harold Dollar, deceased; H. M. Lorber; the Anglo California National Bank of San Francisco, a national bank corporation; Mortimer Fleishhacker; and United States Maritime Commission, witnesseth:

Whereas each of the parties hereto previously has duly executed a certain "Agreement Respecting Adjustment Plan of Dollar Steamship Lines, Inc., Ltd.," dated August 15th, 1938; and

Whereas said agreement, so executed, includes as a party thereto each of the parties hereto and also includes Herbert Fleishhacker, and said Herbert Fleishhacker has declined to sign and enter into said agreement; and

Whereas the parties hereto each are willing and desire that said agreement become effective notwithstanding said action of said Herbert Fleishhacker,

Now, therefore, the parties hereto, in consideration of the premises and the mutual agreements and covenants herein contained and other good and valuable consideration, hereby agree as follows:

1. Each of the parties hereto hereby agree that said "Agreement Respecting Adjustment Plan of Dollar Steamship Lines, Inc., Ltd." so heretofore executed by them, be and the same hereby is made effective and binding upon them and each of them notwithstanding the fact that said Agreement has not been executed by said Herbert Fleishhacker.

2. Except only for the omission of said Herbert Fleishhacker as a party to said agreement; and the elimination therefrom of all agreements, convenants, commitments, undertakings, representations, and warranties of said Herbert Fleishhacker therein set forth, said agreement hereby is in all respects ratified and affirmed.

In witness whereof the individual parties, and Keith R. Ferguson and Robert Dollar II, as executors of the estate of John Harold Dollar, also known as J. Harold Dollar, deceased, have executed

fourteen counterparts of this agreement by affixing their respective signatures thereto (such execution of this agreement by said executors being subject to such confirmation by the court in said estate proceedings as may be required by law), and the other parties have caused such counterparts to be executed by their respective duly authorized officers or representatives.

DOLLAR STEAMSHIP LINES, INC., LTD.,
[SEAL] By ARTHUR B. POOLE, *Vice President.*
Attest:

DOLLAR STEAMSHIP LINE,
D. T. BUCKLEY, *Secretary.*
[SEAL] By M. THOMPSON, *Second Vice President.*
Attest:

A. E. LANG, *Assistant Secretary.*

23 THE ROBERT DOLLAR CO.
[SEAL] By H. M. LORBER, *President.*
Attest:
ROBERT P. SEELEY, *Assistant Secretary.*
ADMIRAL ORIENTAL LINE,
[SEAL] By ROBERT DOLLAR II, *Vice President.*
Attest:
E. H. HALL, *Secretary.*
PACIFIC LIGHTERAGE CORPORATION,
[SEAL] By R. H. ANDERSON, *President.*
Attest:
L. C. ROSS, *Secretary.*
OLYMPIC REFINING COMPANY,
[SEAL] By PHILIP E. JOHNSON, *Vice President.*
Attest:
K. BRENDEL, *Assistant Secretary.*
DOLLAR WHARF & WAREHOUSE COMPANY,
[SEAL] By O. G. STEEN, *President.*
Attest:
J. A. TOGNETTI, *Assistant Secretary.*
DOLLAR TERMINAL STEAMSHIP COMPANY,
[SEAL] By H. M. LORBER, *Vice President.*
Attest:
E. C. KESTER, *Secretary.*

R. Stanley Dollar,
R. STANLEY.
Keith R. Ferguson,
KEITH R. FERGUSON.
Robert Dollar II,
ROBERT DOLLAR II.

As Executors of the Estate of John Harold Dollar, also known as J. Harold Dollar, deceased.

H. M. Lorber,
H. M. Lorber.
The Anglo California National
Bank of San Francisco,
[seal] By P. E. Hoover, *Vice President.*
Attest:
R. H. Holmberg, *Assistant Secretary.*
Mortimer Fleishhacker,
Mortimer Fleishhacker.
United States Maritime Commission,
By Reginald S. Laughlin, *Special Counsel.*

In the District Court of the United States for the District of Columbia

24 In the District Court of the United States for the District of Columbia

Civil Action No. 31468

In the Matter of R. Stanley Dollar (an individual), et al.

vs.

Emory S. Land (Chairman, United States Maritime Commission), et al.

Affidavit

Filed Nov. 15, 1945

City of Washington,
District of Columbia, ss:

Emory S. Land, being first duly sworn, deposes and says:

1. That he is Chairman of the United States Maritime Commission, having become a member of said Commission on April 16, 1937, having become Chairman thereof on February 18, 1938, and having served continuously in said capacity since the latter date. That in his capacity as member and Chairman of the Commission he has personal and official knowledge of the facts herein stated, except facts stated upon information and belief, and as to facts so stated, he verily believes them to be true.

2. That the other four defendants in this case are members of the United States Maritime Commission, having served continu-

ously in said capacity since, but not before, the dates set opposite their names:

Howard L. Vickery, September 26, 1940.
Edward Macauley, April 3, 1941.
John M. Carmody, December 13, 1941.
Raymond S. McKeough, October 16, 1945.

3. That all acts of defendants and their predecessors in office set out in the complaint in this case, and all acts taken pursuant to their direction or supervision, to the extent that said acts were actually performed, were done and performed by defendants and their predecessors in office, or pursuant to their direction or supervision, pursuant to the official duties of defendants and their predecessors in office, as members of the Maritime Commission, in the administration of the Merchant Marine Act, 1936.

4. That the history, background, and details of transactions and negotiations pertinent to this controversy are fully set out in two comprehensive reports made by the Maritime Commission to Congress, entitled: "Financial Readjustment in Dollar Steamship Lines Inc., Ltd. and Documents Executed in connection therewith, which resulted in the granting of Operating-Differential Subsidies to Dollar Steamship Lines Inc., Ltd., and American Mail Line, Ltd." and "Reorganization of American President Lines, Ltd. (Formerly Dollar Steamship Lines Inc., Ltd." (dated February 17, 1938, and April 10, 1939, respectively, copies of which are attached hereto and marked Exhibits "A-1" and "A-2", respectively. Affiant verily believes that all statements of fact therein set out, to the extent that said statements are made by the Maritime Commission, its members, officers, and employees are true and correct.

5. That a concise statement of the facts leading up to and underlying the transactions here involved is as follows:

(a) In 1937 the Maritime Commission found that, in order to further the development and maintenance of an adequate and well-balanced merchant marine, to promote the commerce of the United States, and to aid in the national defense, it was essential to maintain, develop and improve the steamship service over routes then and formerly operated by Dollar Steamship Lines Inc., Ltd., such service then being the only American-flag merchant shipping service from the Pacific Coast of the United States to the Far East, and said service being at that time operated by a corporation (Dollar Steamship Lines Inc., Ltd.) standing and having stood for a long period of time upon the brink of bankruptcy, and then, in the Commission's judgment, being operated inefficiently and in a manner detrimental to the interest of the United States of America.

(b) Dollar Steamship Line (hereinafter called "Dollar of California"), the assets of which were transferred to Dollar Steamship Lines Inc., Ltd. (hereinafter called "Dollar of Delaware") in August 1929, and which for some years prior to 1924 had operated nonscheduled freight steamship service, began in 1924 to operate a round-the-world service with vessels purchased from the United States Shipping Board. These vessels had been constructed by the Shipping Board at a cost exceeding $29,000,000, had a world-market value in excess of $7,000,000, and were sold for $3,850,000, no part of which was paid in cash.

(c) Dollar of California in 1925 purchased from the Shipping Board five additional vessels, construction cost of which was approximately $32,500,000, which had a world-market value of $8,460,000, and which were sold for $5,625,000, of which $140,625 was paid in cash.

(d) In 1931 Dollar of Delaware became financially embarrassed and sought and received extensions of ship sales notes, and on December 31, 1932, past-due indebtedness to the Government amounted to $674,642.50. By April 1933, further payments then due were not made, and well-grounded insistence by the Comptroller General that steps be taken to protect the Government's interest resulted in the creation of a so-called "joint account", which proved ineffective, and, notwithstanding which, by May 1935, past-due indebtedness to the Government amounted to $2,328,530.16.

(e) When in April 1937 the Maritime Commission began to take active steps looking to the preservation of this steamship service, Dollar of Delaware owed the Government more than $15,000,000, and had long been in default amounting to more than $3,000,000. It was without sufficient net income or current assets to meet amortization requirements, was indebted to creditors other than the Government in an amount exceeding
27 $2,500,000, a substantial portion of which indebtedness was past due. Defaults on its obligations to the Government, both as to principal and interest, were increasing steadily. Vessel maintenance had been neglected to the point where many ships did not comply with legal and practical requirements for safety at sea, and sailings were made only with the greatest difficulty. Bankruptcy proceedings had been under consideration by the Government for more than a year and also before the creation of the Maritime Commission, and in early 1937 were also under consideration by the company itself. Bankruptcy proceedings would have seriously interrupted and impaired steamship service to the detriment of the commercial and military welfare of the United States, would have resulted in serious losses

to trade creditors, considerable unemployment, and little, if any, realization by stockholders.

(f) Faced by this situation, the Maritime Commission was also faced by the fact that it was without power to grant an operating subsidy, unless it determined, among other things, that the company possessed financial resources necessary to conduct the proposed shipping operations, and that the Commission was legally compelled to withhold payments of any amounts due under contract providing for such subsidy while the contractor was in default on construction loans, ship sales mortgage notes, or other obligations due the United States.

(g) The situation, summed up, was that the national interest required that service be preserved; it could be preserved only by means of operating subsidy, and the Commission could neither grant such subsidy nor pay such subsidy if granted unless the company were financially rehabilitated and its management enormously improved.

(h) In order to solve the problem presented, the Commission worked out, and there was consummated on January 25, 1938, a partial rehabilitation which the Commission rightly regarded as an important forward step in working out the preservation of the essential steamship service involved, and enabling the Commission to support it by adequate and essential, but temporary, subsidy. Accomplishments as of this date included, among other things, the following:

(1) The adjustment of over $1,500,000 in trade debt on the general basis of 20 per cent cash, 20 per cent long-term debentures, and 60 per cent preferred stock.

(2) The capitalization of over $1,000,000 of bank debt and the extension of the balance of $1,800,000 over a period of 10 years.

(3) The capitalization in toto of almost $2,000,000 of intercompany debt.

(4) The consummation of arrangements making available to Dollar of Delaware all the shipping personnel and assets of the Robert Dollar Company at cost.

(5) The termination without cost to the Government of a suit filed by Dollar of Delaware against the United States for almost $6,000,000 based upon termination of the mail contract.

(6) The reconstitution of the board of directors whereby directors were elected who would safeguard and advance the interest which the Commission, the company's creditors, and the public had in the maintenance of the services.

(7) The grant to Dollar of Delaware of a six months' operating-differential subsidy. The amounts payable under this subsidy were found by the Commission in the exercise of its discretion to

be the maximum amounts then payable under the requirements of sec. 603 (b) of the Merchant Marine Act, 1936, and were based upon expert estimates by the Commission's Division of Research, made in the light of data in the possession of the Commission on American and foreign operating costs in the trade served by the subsidized vessels.

(i) The Commission recognized that its accomplishments as of January 25, 1938, constituted only the first step in working out the problem. It continued to explore methods of preserving and improving the steamship service, and as an aid thereto the readjustment upward of amounts payable as operating subsidy to the maximum legally permissible. By March 1938, the Commission knew that the company, which on October 31, 1937, had total current assets of $1,505,000 and total current liabilities of $6,560,000, then presented an even less favorable financial picture, as on February 28, 1938, a balance sheet, prepared under the direction of Commission representatives in California, showed that the company had $310,000 in cash or equivalent and total available funds aggregating $770,000; that the company was faced with the necessity of reserving $260,000 to make agreed payments to trade creditors, and of providing prompt payment of $508,000 of trade debt not covered by agreements. The company's credit facilities had been restricted or withdrawn. Prepayments of freight and passenger money had decreased heavily, and a large amount of working capital was required in order to prevent complete cessation of the steamship service.

(j) On April 28, 1938, the Commission advised R. Stanley Dollar of its willingness to enter into a transaction which, among other things, contemplated grant of a five-year operating differential subsidy, guarantees of then-existing indebtedness of Dollar of Delaware to the Commission by R. Stanley Dollar and various enterprises, these guarantees to be secured by pledge of all of R. Stanley Dollar's holdings in Dollar of Delaware, all stock of Dollar of Delaware held by Dollar of California, and all of the Robert Dollar Company's holdings of Dollar of Delaware stock.

(k) This proposal was somewhat modified, but the requirement for the pledge of stock was unchanged, and Dollar of Delaware, on June 17, 1938, by letter, a copy of which, together with enclosures, is hereto attached and marked Exhibit "B", declared its inability to secure the guarantees and pledges, and in effect rejected the Commission's proposal, but by enclosing a copy of a letter from Dollar of California, dated June 16, 1938, raised the possibility that the Commission might acquire 2,100,000 shares of B stock of Dollar of Delaware, provided that Dollar of

Delaware would assume certain leases, change the name of the company, cease to use the house flag and trade insignia, and that all ship sales notes and mortgages securing the same were cancelled and new notes and mortgages given by Dollar of Delaware direct, this provision being of special benefit to Dollar of California. On June 20, 1938, however, the Commission was advised by its special counsel in San Francisco of the possibility that the Dollar interests would agree to transfer title to all Class B stock and certain Class A stock of Dollar of Delaware to the Commission, and on June 21, 1938, the Commission authorized negotiation for the acquisition of this stock. These negotiations culminated in a contract between plaintiffs (and others) and the Commission, dated August 15, 1938, a copy of which is hereto attached and marked Exhibit "C".

(1) In considering the action to be taken, the Commission considered the advice of its General Counsel that if the Commission, after considering all the facts, found that the acquisition of the stock was a necessary incident to and part of the consideration for the carrying out of the proposed plan, or that such acquisition was necessary to protect, preserve, or improve the Commission's creditor position, the Commission might legally acquire the stock, and as a further incident to the transaction, release R. Stanley Dollar and Dollar Steamship Line from their obligations as comakers or guarantors of the mortgage notes held by the Commission, all the facts, including those heretofore set out, and, in particular, the following: The Commission was then advised that Dollar of Delaware, which had for a period of years faced the inability of meeting its obligations as they accrued, including obligations to
31 the United States, owed its unsecured creditors approximately $3,485,000; that it had available in current assets $733,000; and that on a liquidation basis, the company's creditors would have received, at most, 60 cents on the dollar, and might very well have received much less; that the only alternative was reorganization in bankruptcy proceedings, which would result in no trade creditors being paid, no repair men being paid, no realization by stockholders, approximately 2,500 employees being thrown out of work, at least temporarily, possible bankruptcy of creditors, a loss in purchasing power on the West Coast of about $10,000,000 per annum; and that although the Commission had prior thereto considered granting a temporary subsidy if certain arrangements could be completed, which contemplated only that the Commission would hold stock of Dollar of Delaware as security, it had by now, after continued consideration of the management record of Dollar of Delaware, come to the conclusion that it was essential for the

Commission to acquire full and unrestricted title to the stock in order that R. Stanley Dollar and his associates should not have power to resume managerial functions with respect to Dollar of Delaware, in view of the Commission's opinion of the effect of such resumption upon the future of the steamship service and its eligibility for subsidy under the Merchant Marine Act, 1936.

(m) It was the opinion of the Commission that the failure of Dollar of Delaware to maintain and keep ships in seaworthy condition as required by law, and to maintain regular sailings at a time when the Army and Navy were increasing their shipments to the Philippine Islands, in particular, and the South Pacific, in general, had then deteriorated the service to such an extent that commercial shippers were being compelled to divert their cargo to foreign lines, and that reorganization proceedings under the National Bankruptcy Act, which appeared the only alternative to the execution and performance of the contract of August 15, 1938, would have been detrimental to the interest of the United States and would have enormously benefited foreign steamship operators in the field, who were predominately Japanese.

32 (n) So finding, and finding that acquisition of title to the stock referred to in the agreement of August 15, 1938, by the United States of America was a necessary incident to and part of the consideration for the carrying out of the proposed plan, which would permit a grant of subsidy under the Merchant Marine Act, 1936, and that such acquisition was necessary to protect, preserve, and improve the Commission's creditor position, and in order to keep alive the only American-flag merchant shipping service from the Pacific Coast of the United States to the Far East, and further the development and maintenance of an adequate and well-balanced merchant marine, to promote the commerce of the United States, and to aid in the national defense, the Commission authorized signature and performance of the agreement of August 15, 1938, and the acquisition of the stock.

6. That subsequent to the action of the Commission referred to above, the contract of August 15, 1938, was fully performed; and that prior to performing irrevocably its obligations thereunder, the Commission secured from Keith R. Ferguson, counsel for R. Stanley Dollar, Dollar of California, H. M. Lorber, and the Estate of J. Harold Dollar, deceased, an opinion, a true copy of which is hereto attached and marked Exhibit "D", which opinion in brief advises the Commission that delivery to the Commission of the stock certificates referred to in the petition in this case duly endorsed in blank by the registered owners thereof would convey to the Commission valid title to said stock, free and clear of any liens or encumbrances whatsoever, and that said certificates had

been duly endorsed in blank by the registered owners thereof; that said certificates so endorsed were delivered to the Commission on or about October 26, 1938, by the American Trust Company of San Francisco, California, as escrow holder thereof, and as an essential part of the performance of the agreement of August 15, 1938; and that in performing its obligations under the agreement of August 15, 1938, and in accepting said stock certifi-
33 cates, the Commission relied upon said opinion; that upon delivery there were affixed to said stock certificates as a required condition of acceptance by the Maritime Commission transfer tax stamps in the amounts required by the laws of the United States to be affixed to such certificates when title thereto is conveyed.

7. That in order for the Estate of J. Harold Dollar, deceased, to convey unrestricted title to the Maritime Commission, Keith R. Ferguson, who, as above stated, was, in connection with the performance of the agreement of August 15, 1938, counsel for R. Stanley Dollar, Dollar of California, H. M. Lorber, and The Estate of J. Harold Dollar, deceased, and who was also an executor of said estate on September 2, 1938, acting with Robert Dollar, II, another executor of said estate, filed in the Superior Court of the State of California, in and for the County of Marin, a petition "For Order authorizing sale of stocks * * *," in which these executors recited, among other things, the ownership of the stock, the execution of the agreement of August 15, 1938, and the supplement thereto, and prayed for an order of court authorizing and directing them "to transfer all right, title, and interest of the above estate" in and to the stock which they subsequently delivered to the Commission, and otherwise to comply with the agreement of August 15, 1938, as supplemented; that on September 12, 1938, the court entered an order "authorizing sale of stock," confirming the agreements signed by the executors (the agreement of August 15, 1938, and the supplement thereto) and directing the executors "to transfer all right, title, and interest * * *" of the estate to certain stock to the Commission or its nominee, having found, among other things, that the consummation of the acts and things required by the agreement and its supplement were "for the best interest of the estate and its creditors, and of the heirs and beneficiaries under the Will * * *." True copies of said application and order are hereto attached, and marked Exhibits E–1 and E–2, respectively.

8. That the Commission has never entered into any contract, oral or written, direct or indirect, express or implied, with plaintiffs in this case, their predecessors in interest, or any of them, with respect to the stock described in the complaint in this case,

other than the contract of August 15, 1938, which, especial-
34 by the terms of paragraph 23 (d), thereof contemplates that the Commission may sell the stock; and especially has entered into no contract to accept or hold said stock as collateral for indebtedness or the equivalent of such collateral, or to reconvey any of said stock to those who conveyed it to the Commission on October 26, 1938, or any of them, under any circumstances whatsoever.

9. Under paragraphs 4 and 5 of the agreement of August 15, 1938, certain stock pledged to the Anglo California National Bank of San Francisco was to be transferred to the Maritime Commission, free and clear, if the indebtedness secured by the stock was paid within five years, or if the Commission should pay pledgee a sum equal to $2.00 per share for such pledged stock. 33,600 shares of this stock were held by R. Stanley Dollar, 11,273 shares by the Estate of J. Harold Dollar, deceased, and 6,660 shares by R. Stanley Dollar, the Estate of J. Harold Dollar, deceased, and Herbert Fleishhacker, jointly. The indebtedness was paid, and 49,313 shares of said stock were transferred to the Commission on or about September 22, 1941. The 2,220 shares of such pledged stock not transferred represent the one-third interest of Herbert Fleishhacker in the stock held jointly by Fleishhacker, R. Stanley Dollar, and the Estate of J. Harold Dollar, deceased. Herbert Fleishhacker did not sign the agreement of August 15, 1938.

10. That the Maritime Commission received the stock referred to in plaintiff's complaint on or about October 26, 1938, for the United States of America, and has ever since held, and now holds, said stock for the United States of America, and the Maritime Commission as an independent agency thereof.

11. That approximately one month before acquiring the stock referred to in the complaint herein, the Maritime Commission issued a press release which was given wide publicity, wherein it was stated that the Commission might dispose of "its" stock after it acquired the same, thereby giving notice to the world of its intention to sell said stock, should it so desire. A copy of said press release is attached hereto and marked Exhibit F.

35 12. That after the performance of the agreement of August 15, 1938, the name of Dollar of Delaware was changed to American President Lines, Ltd., and on or before September 6, 1943, American President Lines, Ltd., had fully satisfied and discharged all indebtedness due the United States of America from Dollar of Delaware and American President Lines, Ltd., all such indebtedness having been paid from earnings realized subsequent to October 26, 1938, and after the resignation of R. Stanley Dollar and Hugo Lorber as directors of Dollar of

Delaware, and after the cessation of, direct or indirect, control or management of Dollar of Delaware, or participation therein by any of these plaintiffs or their predecessors in interest.

13. That on or about July 6, 1943, the Commission issued a press release offering the stock referred to in the complaint in this case for sale, which press release was given wide publicity and constituted notice to the world of the Commission's intention to sell the stock. A copy of said press release is attached hereto and marked Exhibit "G".

14. That in response to the Commission's aforesaid public offer for sale by the Commission in 1943, the Commission received seven proposals to purchase the stock for substantial sums of money, and said proposals were considered by the Commission until October 19, 1943, on which date the Commission rejected all of them.

15. That notwithstanding the facts set out in paragraphs 9, 10, 11, 12, and 13, plaintiffs, nor their predecessors in interest, nor any of them, at any time between October 26, 1938 and July 1, 1945, advised the Commission that they or any of them asserted any right, power, title or interest thereto, or with respect of said stock, or that they in any way disputed the absolute ownership thereof by the United States of America, or sought by protest, legal action, or otherwise in any way to restrain or prevent the sale of the stock, or made any demand upon the Commission to return said stock to them, their predecessors in interest, or any of them, save that during the latter part of 1940, one J. H.
36 Rosenbaum, purporting to act as attorney for R. Stanley Dollar, and one L. N. Rosenbaum, his associate, asserted, in such capacity and for the benefit of other former stockholders of record, a claim of ownership in the stock here in controversy. In December 1940, affiant as Chairman of the Commission, informed Mr. L. M. Rosenbaum that such claim was without legal or moral foundation.

15. That there are now under consideration by the Maritime Commission, and have been under consideration by the Maritime Commission for more than 60 days, substantial offers by private individuals and organizations to purchase the stock referred to in the complaint, for sums aggregating millions of dollars; that defendants are now restrained from accepting any such offers; and that in the opinion of affiant, if the Commission be in anywise restrained or prevented from disposing of said stock, the Commission will thereby be hampered and impeded in the performance of the duty imposed upon it by Congressional mandate to further the development and maintenance of an adequate and well-balanced merchant marine, to promote the commerce of the United

States, and to aid in the national defense, and the United States be grievously injured and substantially damaged.

And further deponent saith not.

November 13, 1945.

Emory S. Land,
EMORY S. LAND.

CITY OF WASHINGTON,
District of Columbia, ss:

Emory S. Land, being duly sworn, says that he is one of the defendants in this case, that he has read the foregoing affidavit, and that all statements made therein are true and correct, save that allegations stated to be made upon information and belief he verily believes to be true and correct.

Jennie G. Armstein.
JENNIE G. ARMSTEIN,
Notary Public in and for the District of Columbia.

My Commission expires June 14, 1949.

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Exhibit B

SAN FRANCISCO, CALIFORNIA, *June 17, 1938.*

UNITED STATES MARITIME COMMISSION,
Washington, D. C.

GENTLEMEN: The consideration which our Board of Directors at its several meetings has been giving to the United States Maritime Commission's resolution of June 4, 1938, which contemplates the granting of a five-year operating differential subsidy to our company on the terms therein provided, was concluded on Thursday evening the 17th of June. There was thereupon forwarded you a telegram, copy of which is enclosed herewith in confirmation, indicating in part the result of such consideration, as well as the action of certain requested guarantors referred to in your resolution, and advising you that it would be followed by a letter with full information of the action of the Board. In conformity therewith, this letter is addressed to your Commission.

Treating first of the action of the Board with respect to the subsidy agreement, the form of which was annexed to your resolution, we are pleased to confirm our advices to you that the same meets with the Board's approval, with the following modifications:

1. It is desirous that under the heading "Description of Route" on page 2 of the form of subsidy, there be made provision for a third route, sailings over which route shall be optional with the

Operator, as follows: Between New York and a port or ports in Japan, China, the Philippine Islands, French Indo China and the Straits Settlements, and the Dutch East Indies, via the Panama Canal and ports in California and the Hawaiian Islands, with the privilege of calling at Boston and Havana.

2. That in lieu of Section 3 of the subsidy agreement found on page 3 under the heading "Replacement Program", the following (which was Article 3 of the subsidy agreement accompanying the Commission's letter of April 28, 1938) be substituted:

"3. Replacement of Subsidized Vessels. The Applicant agrees, promptly and with due diligence and a manner satisfactory to the Commission, (a) to develop a replacement program for the replacement of all of the Applicant's vessels, except the "Coolidge," by new vessels of a size, type and speed satisfactory to the Commission under Title VII of the Merchant Marine Act of 1936; and (b) to enter into contracts satisfactory to the Commission, under Title VII of the Act, for the charter of such newly constructed vessels in accordance with the terms thereof.

"If satisfactory progress is being made in the construction program referred to above, the old vessels employed by the Operator, which are to be replaced by the newly constructed vessels, may continue to be operated under this agreement pending replacement with the new vessels, and subsidy payments, shall be made with respect thereto whether or not such vessels shall at the time of operation be more than 20 years of age."

Next treating of the resolution proper, the Board has indicated its readiness to make application to the Reconstruction Finance Corporation for the loan in the resolution referred to, and
694 to comply with the terms and conditions precedent to the authorization of such a loan insofar as they are not in conflict with the provisions of the resolution of the United States Maritime Commission, as to which the Board of Directors has been unable to comply, and to execute and deliver a first preferred blanket mortgage on its operating fleet of thirteen vessels to secure such loan from the Reconstruction Finance Corporation and the advances to be made by the Commission for purpose of repairs, as in the resolution indicated, as well as to execute and deliver a junior blanket preferred mortgage in favor of the United States Maritime Commission to secure the indebtedness referred to in such resolution as the "subordinated indebtedness", and the necessary instruments to rearrange the amortization requirements with respect to the indebtedness referred to, in the manner set forth in the schedule attached to your resolution.

The Board further approved the provisions under Second Resolved of your resolution number 3 and 4.

As to provision numbered 5 thereof, the Board was advised that The Anglo California National Bank would agree to extend the indebtedness as in such provision set forth.

As to provision 7 thereof, the Board expressed its willingness to make effective the pledge therein referred to.

As above indicated, provisions 12 and 13 were also approved.

Furtherfore, the Board authorized the filing of formal application for a five-year operating differential subsidy, as set forth in provision 19.

A further provision of the resolution which has relation to the advances to be made by the Maritime Commission for repairs, the same being particularly numbered Third, the Board expressed itself as feeling, particularly insofar as the stipulation that the moneys therein referred to should be disbursed in reimbursement of like amounts previously paid by the Operator for repairs that such a provision might render it difficult to effect the repairs, inasmuch as there might not be funds available for payment of the repairs except such as would come from the Maritime Commission.

As to the other provisions not hereinabove referred to, the same relate in the main to requested guarantees of certain corporations and individuals, and were not matters on which the Board could act, except to call upon those parties for the guarantees in question. With respect thereto it received the following communications, copies of which are herewith enclosed and which are self-explanatory:

Letter of Dollar Steamship Line of California dated June 16, 1938.

Letter of the Robert Dollar Co., dated June 16, 1938.

Letter of H. M. Lorber dated June 16, 1938.

Letter of R. Stanley Dollar dated June 16, 1938.

After acting upon the resolution of your Commission, the Board took under consideration means other than as suggested by the resolution of maintaining continued operation of the line operated by its company. This came by way of a suggestion made because the Board feels it is the logical method under all the circumstances of accomplishing the purpose of the Maritime Commission, with which the Board is wholly in accord, in maintaining an essential trade route, and because of its feeling of a keen responsibility to its creditors, in which it considers the Commission must join. Not only this, but it appears to the Board to be substantially in
695 conformity with the provisions of Section 507 of the Merchant Marine Act, which section is Section 1157 of the United States Code Annotated. We refer to the suggestion as contained in the concluding portion of our telegram of June 16th to your Board, which is substantially as follows:

That this company promptly develop a replacement program on the basis following, whereby three combination freight and

passenger liners of improved "Coolidge type" would be constructed, to-wit, three ships at an estimated cost of Eleven Million Dollars, or a total of Thirty-three Million Dollars, as to which the construction differential subsidy would be fifty per cent, making the net cost to our company for the three ships referred to a total of $16,500,000. The cash payment under such an undertaking to be 25% of the latter amount, or in figures $4,125,000. The balance of such cost to be payable in twenty equal annual installments, the first of which to be paid one year after delivery of each vessel, with interest on such installments at the rate of 3½%.

That in consideration of the undertaking on the part of our company of such program, as indicated, the Commission shall take over at their full present value the following named vessels: "Coolidge," "Cleveland," "Taft," "Wilson," "Lincoln," "Pierce," "Adams," "Garfield," "Harrison," "Polk," "Hayes," "Monroe," and "Van Buren," these vessels having been valued at a fairly recent date by Captain A. F. Pillsbury, a former representative of the United States Shipping Board, and a recognized authority in such matters, at $18,550,000. The proceeds resulting from such transfer to be applied:

First, to the satisfaction of the mortgages now held by the United States Maritime Commission on the ships above enumerated, which now aggregate the principal amount of $7,494,158.04:

Second, to the cash payment of the 25% payable on the three ships to be constructed, amounting to $4,125,000.

Further, an agreement with us by the Commission for the continuation of the operation of the ships to be transferred to the Commission on their present trade routes under some mutually satisfactory form of operating agreement should be entered into, to remain effective until such time as the three ships to be constructed, as hereinbefore referred to, shall be available to replace the service now being maintained by the ships so to be transferred.

Finally, that the Maritime Commission should grant an adequate operating differential subsidy covering the new ships so to be operated, in order that our company in operating them may be placed on parity with foreign competition.

We await the further suggestion of your Commission, with the assurance that so far as it is possible to the Board of Directors of our company, we will continue to seek means of cooperation with the Commission to the end that the essential trans-Pacific trade route may be maintained.

Submitted on order of the Board of Directors of Dollar Steamship Lines Inc., Ltd.

D. T. BUCKLEY, *Secretary.*

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R. STANLEY DOLLAR,
Dollar Steamship Lines Inc., Ltd., San Francisco, California.

TO THE BOARD OF DIRECTORS,
Dollar Steamship Lines Inc., Ltd., San Francisco, California.

GENTLEMEN: I have had before me the matter of the requested guarantee by me as outlined in the resolution of the United States Maritime Commission of June 4, 1938, relative to an operating-differential subsidy for your company.

After mature consideration I must with regret advise you that I am unable to comply with the requested requirements.

I appreciate that it is desirable that the operation of the line be continued, in the public interest. With that in mind may I offer the suggestion that it may be advisable that means be devised whereby the fleet of your company, valued in 1937 by Captain A. F. Pillsbury, a surveyor of unquestionable ability and reputation, at Eighteen Million Dollars, may be transferred to the Maritime Commission against full satisfaction of the existing mortgage indebtedness on the vessels in the sum of $7,474,192.94. While not suggesting the details as to how this may be accomplished, it is not out of place to call your attention to the fact that provision should be made for the protection of creditors in any negotiations which may be consummated along these lines with the Commission.

Yours very truly,

R. STANLEY DOLLAR.

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DOLLAR STEAMSHIP LINES,
San Francisco, California, June 10, 1938.

BOARD OF DIRECTORS,
Dollar Steamship Lines Inc., Ltd.,
San Francisco, California.

DEAR SIRS: Referring to your request that I execute and deliver to the United States Maritime Commission a guarantee of subordinated indebtedness of your company secured by a pledge or assignment of certain stocks, I wish to comment as follows:

The present mortgage indebtedness of your company to the Maritime Commission consists of the following:

S. S. "President Coolidge"	$3,918,964.00
7—502 type Round-World combination passenger and freight ships, each	256,277.57
5—535 type Trans-Pacific combination passenger and freight ships, each	356,250.00
S. S. "President Johnson," combination passenger and freight ship	15,819.19
S. S. "President Fillmore," combination passenger and freight ship	75,000.00

I am of the opinion that these vessels have all been paid down to such a low point that there is a very considerable equity in all the ships and the Maritime Commission are amply secured.

Furthermore, the five year proposed subsidy agreement, contract provides for the impounding of depreciation at the rate of 5% per annum on their original cost, which monies will still further reduce the above indebtedness.

I understand it is proposed to borrow $2,000,000 from the R. F. C. for working capital and $1,500,000 additional from the Maritime Commission to provide for repairs and improvements to the 502 and 535 type steamers. If the Maritime Commission allow your company full parity in every respect during the five year subsidy period, this will permit the company to operate at a profit and its assets will not be impaired so that these loans can easily be repaid during the period.

Furthermore, the R. F. C. loan provides that no dividends can be paid to the stockholders so long as any part of their loan remains unpaid. Inasmuch as the subsidy agreement permits the company to earn at least 10% per annum on their capital necessarily employed in the business, it would permit of an accumulation of 50% of profits during this period, which, together with the general obligation of the company, in my opinion, will provide ample security to meet this commitment.

698 In view of this, I do not think the Dollar Steamship Lines Inc., Ltd. should be called upon to provide collateral in excess of their own resources, and I am unwilling to guarantee indebtedness for above reasons.

However, in the event you are able to secure guarantees of 80% of the present holders of the 252,000 shares of Class A stock now outstanding, I will be very happy to pledge my holdings of 9,174 shares of Class A stock, subject to the guarantee being limited to the collateral.

Yours very truly,

H. M. LORBER.

699 THE ROBERT DOLLAR CO.
Robert Dollar Building,
San Francisco, June 16, 1938.

DOLLAR STEAMSHIP LINES INC., LTD.,
311 California Street,
San Francisco, California.

GENTLEMEN: By a resolution of the Board of Directors of The Robert Dollar Co., I have been requested to advise you that that Company respectfully declines to execute the guarantee and pledge the collateral as security therefore as requested by the

resolution of the United States Maritime Commission adopted June 4, 1938.

I have further to advise that on June 10, 1938 at a Special Meeting of the Board of Directors of The Robert Dollar Co. the following resolution was adopted:

"RESOLVED, That the execution of the guarantee in the form and manner set forth in Paragraph 9 of Resolved Second, of the resolution of the United States Maritime Commission under date of June 4, 1938, is opposed to the best interests of this corporation, and that such guarantee be therefore not executed.

Very truly yours,

THE ROBERT DOLLAR CO.,
By KEITH R. FERGUSON,
Director.

700. DOLLAR STEAMSHIP LINE,
San Francisco, California, June 16, 1938.

DOLLAR STEAMSHIP LINE INC., LTD.,
311 California Street,
San Francisco, California.

GENTLEMEN: Referring to the resolution of the United States Maritime Commission adopted June 4, 1938, in reference to requirements in connection with a proposed operating differential subsidy agreement for your Company, we have to advise that the terms thereof, in our opinion, are unworkable.

The proposed subsidy of about $3,000,000 annually is, in our opinion, inadequate to meet foreign cost of operation, and does not give full parity to your Company.

This Company is co-maker of ship sale notes on seven (7) round-the-world steamers of the 502 type and five (5) trans-Pacific steamers of the 535 type, aggregating $3,575,193.04. The sound value of these vessels, figured on a going-concern value, far exceeds this amount. Captain A. F. Pillsbury, an independent and recognized authority, appraised these vessels on August 24, 1937, at $12,300,000 as their going-concern value.

On June 13, 1938, Congress passed a bill which would permit of the United States Maritime Commission taking over these vessels and operating them for their own account. If this power were exercised, it would have the effect of making the Common stock of Dollar Steamship Lines Inc., Ltd., of no value; it would jeopardize the outstanding claims of its creditors who carried their credits against the Company from February 1, 1937, to June 30, 1937, during which time the United States Maritime Commission impounded the Company's mail pay aggregating $1,030,496.68 which on October 8, 1937, was offset against the ship sales

notes, the creditors also being instrumental in maintaining this all-important American line during the period from June 30, 1937, to January 28, 1938, during which period the Company was negotiating for a subsidy and during that time received no Government aid.

In view of this ominous situation and by reason of the fact that both Dollar Steamship Lines Inc., Ltd., and Dollar Steamship Line (California) have guaranteed to hold R. Stanley Dollar harmless as a co-maker of the ship-sales notes, and with the view of protecting your creditors, your employees, and maintaining the line, this Company, Dollar Steamship Line (California) undertakes the following in order to enable you to negotiate a more workable arrangement with the United States Maritime Commission:

1. This Company will surrender to the United States Maritime Commission 1,872,210 shares of Common B, capital stock in your Company, and will undertake to acquire and surrender to the Commission an additional 227,790 shares of Class B common capital stock of your company.

2. It will arrange to acquire and cancel the managing agency agreement with the Robert Dollar Co., dated June 23, 1926.

3. It will arrange to procure for your Company all of the furniture, fixtures belonging to The Robert Dollar Co. now used in your leased premises; together with all of the automobiles, belonging to The Robert Dollar Co., at a price equal to their going-concern appraised value.

701 4. It will cause to be left with you, the personnel you now have.

5. Your Company is to assume all leases of all property now used by you and said leases are to be taken directly in your name.

6. It is a condition that you will change the name of your Company, and that you shall not use the house flag, or funnel insignia, or any other trade insignia now employed by you.

7. Furthermore, all ship-sales notes and the mortgages securing same are to be cancelled and new notes and mortgages given by your Company direct.

These agreements shall all be in a form satisfactory to and approved by our attorney.

Very truly yours,

DOLLAR STEAMSHIP LINE (California),
By H. M. LORBER, *Vice President.*

715 *Exhibit D*

Subject: Acts and proceedings taken in connection with the consummation of the Adjustment Plan Agreement executed by the Commission, Dollar Steamship Lines Inc., Ltd., et al.,

dated August 15, 1938, as modified by Agreement dated August 19, 1938.

In connection with the consummation of the acts and things required to be done under the aforementioned agreements, and with particular reference to the instruments of transfer, assignments, agreements, and other instruments listed below under the heading "Documents" and to be executed by the parties thereto including the persons respectively listed below under the heading "Parties," I wish to advise that I am counsel for said Parties; that as such counsel and with respect to such of the parties as are corporations I have supervised or examined and I am familiar with the proceedings relating to the organization and present status of said corporations, and I have supervised and examined the corporate proceedings authorizing the execution of said proposed instruments of transfer, assignment, agreements, and other instruments. I have also examined the incorporation papers of said corporations and all amendments thereto, the bylaws and other regulations and the applicable statutes relating to the conduct of their business and execution of such instruments. The instruments of transfer, assignments, agreements, and other documents to which this opinion relates, are as follows:

A. Document.—Stock certificates representing in the aggregate 227,790 shares of the class B stock of Dollar Steamship Lines Inc. Ltd. (hereinafter called Dollar of Delaware), each of the par value of $1, standing in the name of The Robert Dollar Co., have all been duly assigned and delivered to Dollar Steamship Line (hereinafter called Dollar of Delaware).

Parties.—The Robert Dollar Co. and Dollar of California (both California corporations).

B. Document.—Stock certificates representing in the aggregate 2,100,000 shares of the class B stock of Dollar of Delaware, of the par value of $1 each, including the 227,790 shares referred to in lettered subdivision A of this opinion, all standing in the name of Dollar of California (except as to five certificates representing five shares of said class B stock of $1 par value standing in the names of Arthur B. Poole, J. Hugli Jackson, Paul E. Hoover, Grant H. Wren, and Joseph R. Sheehan, constituting the qualifying shares of said directors), all of which certificates have been duly endorsed in blank by the registered owners thereof, and delivered to the Commission.

Parties.—Dollar of California.

C. Document.—Stock certificates representing in the aggregate 37,771 shares of the Class A stock of Dollar of Delaware,

standing in the names of the following persons in the respective amounts of stock set forth opposite their names:

J. Harold Dollar estate		24,107
R. Stanley Dollar	1,780	
C. P. Ritter	513	
		2,293
H. M. Lorber		9,174
Dollar of California		2,075
Admiral Oriental Line		122

which certificates have been duly endorsed in blank by the registered owners thereof and delivered to the Commission.

716 Parties.—J. Harold Dollar Estate, R. Stanley Dollar, C. P. Ritter, H. M. Lorber, Dollar of California, Admiral Oriental Line (a Nevada corporation).

D. Document.—Bill of sale from The Robert Dollar Co., seller, to Dollar of California, covering all of the tangible property referred to in paragraph 9 of the Adjustment Plan in accordance with the construction of said paragraph 9 as placed thereon by letters exchanged between The Robert Dollar Co., Dollar of California, and Reginald S. Laughlin, special counsel for United States Maritime Commission.

Parties.—The Robert Dollar Co. and Dollar of California.

E. Document.—A bill of sale, covering all of the property included in the bill of sale referred to in lettered subdivision D of this opinion by Dollar of California as seller and Dollar of Delaware as purchaser.

Party.—Dollar of California.

From such examination, I am of the opinion that:

1. The corporations mentioned as "Parties" in subdivisions A to E above have been duly organized and are existing under the laws of the several States of the United States as recited in the foregoing lettered subdivisions of this opinion, with full power to execute and deliver said documents executed by them as set forth in said lettered subdivisions and to sell, assign, and transfer the shares of stock and tangible property which said documents purport to transfer, respectively.

2. The execution and delivery of the documents set forth in the lettered subdivisions A to E, inclusive, of this opinion have been duly authorized by proper action of the board of directors of such of the "Parties" thereto as are corporations, insofar as each such corporation proposes to execute any of such documents, no other authorization being required.

3. The J. Harold Dollar Estate being one of the parties transferring certain shares of class A stock of Dollar of Delaware as set forth in lettered subdivision C of this opinion, has executed and delivered such document by the act and deed of Keith R. Fer-

guson and Robert Dollar, II, who are the executors of said estate, and who have been authorized to execute and deliver such documents on behalf of said estate by due order of the court having jurisdiction over said estate.

4. The documents referred to in lettered subdivisions B, C, and E, when executed by the persons whose names (and official positions when acting as corporate officers or fiduciaries) are listed in schedule A to this opinion letter, and delivered in the case of the certificates set forth in subdivisions B and C to the United States Maritime Commission, and in the case of the bill of sale listed in subdivision E, to Dollar of Delaware, will constitute valid and legally enforceable instruments of transfer, and will convey to the Commission and to Dollar of Delaware, respectively, valid title to the shares of stock and the physical property covered by such instruments of transfer, free and clear of any liens or encumbrances whatsoever.

(Signed) KEITH R. FERGUSON.

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SCHEDULE A

1. Stock certificates representing in the aggregate 2,100,000 shares of the class B stock of Dollar of Delaware. Endorsed in blank by—

(1) M. Thompson as Second Vice President of Dollar Steamship Line: Provided, however, That not more than six such shares may be in the names of individuals, in which event such certificates will be endorsed in blank by such individuals.

2. Stock certificates representing in the aggregate 37,771 shares of the class A stock of Dollar of Delaware. Endorsed in blank by—

(1) Keith R. Ferguson and Robert Dollar II, as sole executors of the J. Harold Dollar Estate (24,107 shares in the aggregate).

(2) R. Stanley Dollar (1,780 shares in the aggregate).

(3) C. P. Ritter (513 shares in the aggregate).

(4) H. M. Lorber (9,174 shares in the aggregate).

(5) M. Thompson as Second Vice President of Dollar Steamship Line (2,075 shares in the aggregate).

(6) Robert Dollar II, as Vice President of Admiral Oriental Line (122 shares in the aggregate).

3. Bill of sale, covering all the tangible property referred to in paragraph 9 of the Adjustment Plan Agreement, to Dollar of Delaware, in accordance with letters exchanged between Dollar of California and Reginald S. Laughlin, special counsel of the United States Maritime Commission.

Executed by M. Thompson as Second Vice President and A. E. Lang as Assistant Secretary of Dollar Steamship Line.

718 *Exhibit E-1*

Filed Sept. 2, 1938. Geo. S. Jones, County Clerk; by Jack Stuty, Deputy.

In the Superior Court of the State of California, in and for the County of Marin

No. 5160

IN THE MATTER OF THE ESTATE OF JOHN HAROLD DOLLAR, ALSO KNOWN AS J. HAROLD DOLLAR, DECEASED

PETITION OF EXECUTORS FOR ORDER AUTHORIZING SALE OF STOCKS AND APPROVING AND CONFIRMING AGREEMENT RESPECTING ADJUSTMENT PLAN OF DOLLAR STEAMSHIP LINES, INC., LTD.

To the Honorable THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, in and for the County of Marin:

The Petition of Robert Dollar II, and Keith R. Ferguson, Executors of the last will and testament of John Harold Dollar, also known as J. Harold Dollar, deceased, respectfully shows:

I

That John Harold Dollar, also known as J. Harold Dollar, the above named deceased, died testate on the 7th day of April 1936, and that Robert Dollar II and Keith R. Ferguson are now, and have been since the 24th day of April 1936, the duly appointed, qualified and acting Executors of the last will and testament of said deceased, which will was duly admitted to probate herein on April 24, 1936.

719 II

That on the 6th day of May 1936 H. De La Montanya was duly appointed by this Court, as the sole appraiser of the above entitled Estate, and that the executors of said Estate have duly prepared and placed in the hands of said Appraiser an Inventory of all of the assets of said estate, but that by reason of the fact that the greater portion of the assets of said Estate consist of shares of stock of Steamship companies which is closely held, and not listed on the market, the Appraiser has, as yet, been unable to complete and file an appraisement of the assets of said Estate.

III

That on the 29th day of January 1938 said Executors of said Estate filed their First Account of their Administration, and on the 11th day of February 1938 said account was approved, allowed, and settled.

IV

That said Estate is the owner of 24,107 shares of Class A capital stock of Dollar Steamship Lines, Inc., Ltd.; it is also the owner of 11,273 shares Class A capital stock of Dollar Steamship Lines, Inc., Ltd., and the owner of an undivided one-third (1/3) of 6,660 shares of Class A capital stock of Dollar Steamship Lines, Inc., Ltd., which latter 11,273 shares and the one-third (1/3) undivided interest in said 6,660 shares is pledged to secure the payment of obligations to Anglo California National Bank of San Francisco.

That said Estate is the owner of approximately forty percent (40%) of the issued and outstanding capital stock of The Robert Dollar Co. That The Robert Dollar Co. is the owner of 227,790 shares of Class B capital stock of Dollar Steamship Lines, Inc., Ltd., and is the owner of 43,912½ shares of the capital stock of Dollar Steamship Line, a California corporation, being over thirty-five percent (35%) of a total authorized and issued capital stock of 125,000 shares; that the above-named Estate is the owner of 6,175½ shares of the capital stock of Dollar Steamship Line, a California corporation, and is the owner of a large block of stock of Dollar Investment Company, which, in turn, is the owner of 29,155 shares of the capital stock of Dollar Steamship Line, a California corporation, being over twenty-three percent (23%) of the total authorized and issued capital stock.

V

That Dollar Steamship Line, a California corporation is indebted to the United States of America on certain Ship Mortgage Notes in the principal amount of $3,574,310.56, and that Dollar Steamship Lines, Inc., Ltd., a Delaware corporation, was, on June 30, 1938, indebted to the United States of America in the principal amount of $7,584,093.66, together with interest, and indebted to other creditors on June 30, 1938, in the sum of $5,709,134.87, a total indebtedness of $13,284,228.53, all as shown by the affidavit of D. T. Buckley, hereto attached, marked "Exhibit A" and by reference made a part thereof. That the Robert Dollar Co. is indebted, in the sum of $1,500,000 to Dollar Steamship Lines, Ltd. (Hongkong), a British corporation, all of whose stock is owned by Dollar Steamship Line of California.

VI

That in the opinion of your Petitioners, the value of the vessels of Dollar Steamship Lines, Inc., Ltd., a Delaware corporation; at a forced sale, would be insufficient to pay its indebtedness to the United States of America, and that in the event of foreclosure of the mortgages on said vessels, there would be a deficiency judgment entered against Dollar Steamship Line, a California corporation in a very substantial amount, which would thereby cause a great, if not a total loss in the value of the holdings of the Estate in the capital stock of Dollar Steamship Line, a California corporation.

VII

That an Agreement Respecting Adjustment Plan of Dollar Steamship Lines, Inc., Ltd., copy of which Agreement is hereto attached, marked "Exhibit B," and by reference made a part of this Petition; and a Supplemental Agreement Respecting Adjustment Plan of Dollar Steamship Lines, Inc., Ltd., copy of which
721 Agreement is hereto attached, marked "Exhibit C," and by reference made a part of this Petition, has been negotiated and executed by the parties thereto, and signed by your Petitioners subject to confirmation by this Court.

VIII

That to comply with the provisions of said Agreements, Exhibits "B" and "C", Dollar Steamship Line, a California corporation, will procure from Dollar Steamship Lines Ltd. (Hongkong) a British corporation, the note of The Robert Dollar Co. in the sum of $1,500,000. and will cause the full satisfaction of said note and indebtedness to be made in consideration of the transfer by The Robert Dollar Co. of certain office furniture, furnishings, fixtures and equipment and other property referred to in Paragraph 9 of the Agreement marked "Exhibit B" and the cancellation of the exceedingly valuable Management Agreement Referred to in Paragraph 7 of said Agreement marked "Exhibit B."

IX

That your Petitioners are informed and believe that the Agreements marked "Exhibits B and C" are to the best interests of the Estate, its creditors, beneficiaries under the will of said deceased, and all persons interested in said Estate, in that the consideration for the transfer of the Class A stock of Dollar Steamship Lines

Inc. Ltd. to the United States Maritime Commission will increase the value of the stock owned by the Estate in The Robert Dollar Co., Dollar Investment Co., Dollar Steamship Line, a California corporation, and other corporations in which the Estate is interested, many times that of the value of the Class A stock of Dollar Steamship Lines Inc. Ltd., a Delaware corporation.

X

That your Petitioners, believing it to be for the best interests of the above named Estate, its creditors beneficiaries under the will of the above named deceased, and all persons interested in said Estate have executed said Agreements subject to the confirmation and approval of this Court.

WHEREFORE, Petitioners pray that this Court enter
722 its Order approving and confirming the execution by your Petitioners, of said Agreements hereto attached, marked "Exhibit B and C", and authorizing and directing your Petitioners, as the Executors of the last will and testament of the above-named deceased, to transfer all right, title, and interest of the above estate in and to 24,107 shares of Class A stock of Dollar Steamship Lines Inc. Ltd., a Delaware corporation, unencumbered; and to transfer 11,273 shares of Class A capital stock, together with a one-third (⅓) undivided interest in an additional 6,660 shares of said Class A, capital stock of Dollar Steamship Lines Inc. Ltd., a Delaware corporation, subject to the pledge agreement thereof with Anglo California National Bank of San Francisco, and that your Petitioners be further authorized and directed to do all the things and take all the steps, acts, and proceedings, and execute and deliver all certificates, documents, instruments and writings that may be necessary or proper to be done on the part of the J. Harold Dollar Estate, and/or Harold Dollar Estate, to accomplish or facilitate the consummation of the transactions and deeds referred to and set forth in said agreements marked "Exhibit B and C" attached to this Petition.

(S) Robert Dollar II
ROBERT DOLLAR II,

(S) Keith R. Ferguson,
KEITH R. FERGUSON,
Petitioners.

(S) KEITH R. FERGUSON,
Attorney for Petitioners.

723 *Exhibit E-2*

Filed Sept. 12, 1938. Geo. S. Jones, County Clerk; by M. Wernich, Deputy.

In the Superior Court of the State of California, in and for the County of Marin

No. 5160

IN THE MATTER OF THE ESTATE OF JOHN HAROLD DOLLAR, ALSO KNOWN AS J. HAROLD DOLLAR, DECEASED

ORDER AUTHORIZING SALE OF STOCKS AND APPROVING AND CONFIRMING AGREEMENT RESPECTING ADJUSTMENT PLAN OF DOLLAR STEAMSHIP LINES, INC. LTD., AS EXECUTED BY EXECUTORS

The Petition of Robert Dollar II and Keith R. Ferguson, Executors of the Last Will and Testament of the above named decedent for an Order Authorizing Sale of Stocks and Approving and confirming Agreement respecting Adjustment Plan of Dollar Steamship Lines, Inc., Ltd., coming on regularly to be heard this 12th day of September 1938, the petitioners appearing in person and by their attorney, Keith R. Ferguson, Esq., and proof being made to the satisfaction of this Court that due notice of the time and place of the hearing of said Petition has been given in the manner and for the time required by law; and the Anglo California National Bank of San Francisco, California, and the Seattle-First National Bank of Seattle, Washington, having the two largest claims on file against said Estate, and Agnes Barr Dollar and Alice Barr Dollar, widow and daughter of the above named deceased, all having, in writing, waived notice of the time and place of the hearing of said Petition and giving their consent to the entry of an order by this Court approving and confirming said agreement respecting Adjustment Plan of Dollar Steam-

724 ship Lipes Inc., Ltd., which said written waivers and consents have been filed herein and oral and documentary evidence having been introduced, and it appearing to the satisfaction of the Court that the allegations of said Petition are true, and it further appearing to the Court and the Court hereby finding that the agreement and supplemental agreement respecting Adjustment Plan of Dollar Steamship Lines, Inc., Ltd., copies of which are attached to said Petition marked "Exhibits B and C"

and the consummation of the acts and things therein required to be done and performed, are for the best interests of the Estate and its creditors and of the heirs and beneficiaries under the Will of said deceased; and the Court being fully advised in the premises, and no creditor, beneficiary, or heir of the above named deceased or other person interested in the Estate appearing or making any objection to the granting of said petition;

It is hereby ordered, adjusted, and decreed that the Petition of Robert Dollar II and Keith R. Ferguson, Executors of the Last Will and Testament of John Harold Dollar also known as J. Harold Dollar, Deceased, for order authorizing sale of stocks and approving and confirming the agreement and supplemental agreement respecting Adjustment Plan of Dollar Steamship Lines, Inc., Ltd., copies of which agreement and supplemental agreement are attached to said Petition and marked "Exhibits B and *B*"; be, and the same is hereby approved and confirmed, and

It is further ordered, adjudged and decreed that the execution by Robert Dollar II and Keith F. Ferguson as Executors of the last Will and Testament of J. Harold Dollar, Deceased, of the agreement and supplemental agreement respecting Adjustment Plan of Dollar Steamship Lines, Inc., Ltd., copies of which are attached to said Petition and marked "Exhibits B and C" be, and the same is hereby approved and confirmed, and

It is further ordered, adjudged and decreed that Robert Dollar II and Keith R. Ferguson as Executors of the above named Estate be, and they are hereby authorized and directed to transfer all right, title, and interest of the above entitled Estate in and to 21,107 shares of class A stock of Dollar Steamship Lines, Inc., Ltd., a Delaware corporation, unencumbered; with one-third (⅓) interest in an additional 6,660 shares of said class A
725 capital stock of Dollar Steamship Lines, Inc., Ltd., a Delaware corporation, subject to the pledge agreement thereof with Anglo California National Bank of San Francisco to the United States Maritime Commission or its nominee; and

It is further ordered, adjudged and decreed That said Robert Dollar II and Keith R. Ferguson as said Executors be, and they are hereby authorized and directed to do all the things and take all the steps, acts and proceedings, and execute and deliver all certificates, documents, instruments and writings that may be necessary or proper to be done on the part of the above entitled Estate to accomplish or facilitate the consummation of the transactions and deeds referred to and set forth in said agreement and

supplemental agreement, copies of which are attached to said Petition and marked "Exhibits B and C".

Done in open Court this 12th day of September, 1938.

(S) EDWARD BUTLER, *Superior Judge.*

726 *Exhibit F*

UNITED STATES MARITIME COMMISSION,
Washington, September 27, 1938.

Immediate release.

The United States Maritime Commission today announced final approval of the adjustment plan signed last month under which Dollar Steamship Lines, Inc., Ltd., will be able to resume its extensive steamship services.

Under the terms of that agreement, the Reconstruction Finance Corporation will loan the company up to $2,500,000 for working capital. The Commission will advance up to $2,000,000 for repairs to the company's ships upon which it holds mortgages. The Commission has also approved an operating-differential subsidy for the fleet of approximately $3,000,000 per year subject, however, to revision at any time that conditions warrant such action during the five-year life of the agreement. This subsidy is designed to meet the substantially lower wage and operating costs of foreign flag competition, the majority of which on the trans-Pacific run is Japanese.

The Commission anticipates that these various funds will be available to the company within the next two weeks.

Chairman Emory S. Land emphasized the fact that company management, under the adjustment plan, remains in private hands. The Commission merely holds the position of majority stockholder through transfer to it, under the adjustment plan, of approximately 90 percent of the corporation's common stock. It is entirely possible, the Chairman said, that the Commission, should it find it advantageous and prudent to do so, may dispose of its stock in the future.

The Board of Directors has invited the Honorable William Gibbs McAdoo to become its Chairman and he has accepted. Senator McAdoo, who sponsored the first shipping bill before Congress in 1914 to put the strength of the Government behind an adequate merchant marine, will give his entire time to the company's affairs. The former Secretary of the Treasury's comprehensive knowledge and experience in finance and transportation should be extremely valuable to the corporation, Chairman Land said.

727 The Board has also invited Joseph R. Sheehan, Executive Director of the United States Maritime Commission, to accept the post of president of the corporation. Mr. Sheehan has

accepted. He will resign from his present position, severing all connections with the Government, to devote his entire time to Dollar management.

Mr. R. Stanley Dollar and Mr. H. L. Lorber will retire from participation in the company's affairs.

Informal discussions have already been held with Mr. McAdoo and several directors in connection with strengthening the higher executive personnel. The Commission hopes to establish well-rounded, strong, and aggressive financial, operating and technical staffs. Discussions will be continued during the coming week so that the directors may immediately take the necessary action to revive this world-wide shipping service.

No changes with respect to personnel generally are contemplated, Chairman Land said. He added that the company's future lies entirely within the hands of the directors and the new management. They will have complete freedom of action. The Commission does not intend to manage the Board of Directors by remote control from Washington, according to Chairman Land. It will deal with the corporation as with any other subsidized shipping company.

Repair work on the company's ships will be expedited, the Chairman said, and one of the major items in this program is improvement of crew's quarters which on some ships at present he described as deplorable.

Resumption of the company's services will provide a sorely needed opportunity for reemployment of maritime labor and at the same time, give shippers the tonnage which for some months has been dangerously low on the West Coast.

The company's subsidized fleet included the following ships: "President Coolidge," "President Cleveland," "President Taft,"
"President Lincoln," "President Wilson," "President
728 Pierce," "President Hayes," "President Monroe," "President
Adams," "President Harrison," "President Polk," "President Garfield," and "President Van Buren."

The importance of maintaining the company as an independent shipping unit on the West Coast is indicated by the fact that it employs normally approximately 2,500 officers and men aboard ship whose compensation approximates $2,700,000 per year; 600 shore employees whose compensation approximates $835,000 per year; purchases approximately $8,000,000 worth of stores and equipment annually and spends more than $1,000,000 per year in repairs.

The agreement under which these services are to be revived provides a replacement program for the company's fleet with the exception of the "President Coolidge," the largest and newest of its ships. The operator agrees to take the necessary action to in-

troduce into its services, under this program new vessels now being designed by the Commission for sale or charter to the company.

The Commission has recognized the imperative and immediate need of a replacement program for the Pacific Coast and such a program, involving an expenditure of approximately $100,000,000 for at least 24 new ships, was outlined in the Commission's press release of April 29, 1938. In this press release, the Commission recognized the importance of Dollar Line services as a vital part of the program.

A resume of the company's affairs leads to certain inescapable conclusions. The company's problems have been fundamental and chronic. They involve a recurrence of causes recognized by the government over a long period of time.

It should be said, however, that the major problem is not attributable to a lack of business. Dollar Steamship Lines, Inc., Ltd. had gross operating revenues from its combination cargo and passenger vessels of more than $13,000,000 per annum during the eight years, 1930–37 inclusive. Almost $5,000,000 per annum of this sum was accounted for by passenger traffic.

729 The real problem is one which has harassed successive federal agencies having to do with shipping. The present Commission determined some time ago that the principal issues must be met squarely and the basic causes eliminated, Chairman Land explained.

Foremost of these, he said, has been unsatisfactory management arising from failure of controlling interests to discharge satisfactorily their functions and to meeting their obligations. These failures are indicated by excessive withdrawals over a period of years for salaries of executive officers. The volume of these withdrawals in the case of Mr. R. Stanley Dollar from the years 1923 to 1933 and for six months in 1934 amounted to $2,526,501.22. During the same period, Mr. J. Harold Dollar's withdrawals aggregated $1,081,693.62. Mr. H. L. Lorber's withdrawals totaled $737,926.21 and those of Mr. Herbert Fleishhacker, $377,756.85.

Commissions to executive officers on company transactions were another indication of unsound management. In May of 1925, for instance, company directors voted R. Stanley Dollar $281,225 as a 5 per cent commission for purchasing from the government five combination passenger and cargo vessels for his own company. The commission was added to the cost of the vessels on the company's books.

A third indication of unsound management appears in payments of management fees to affiliated companies. For example, in 1932, while the operating company was losing over a million dollars, The Robert Dollar Company, its managing agent, whose principal source of income was from a management contract, made

a profit of over $60,000 and paid executive salaries of $135,000. The Robert Dollar Company was owned by substantially the same interests which owned the operating company. The management contract is terminated under the adjustment plan, thus effecting an economy of at least $150,000 per year.

Another illustration involves the Pacific Lighterage Corporation, a former affiliate, during the years 1928 to 1933 when
730 it had profits of approximately $1,500,000 and paid dividends of almost $1,000,000 by reason of its relationship to the operating company.

Dollar management has failed conspicuously to cooperate with creditors for the benefit of the company, Chairman Land said, and controlling interests have persisted in an attitude which the Commission found inimical to the sound development and operation of an essential American flag service from the Pacific Coast.

As a direct consequence of the activities cited above, there has been a constantly increasing current trade debt; an accelerated dissipation of cash and a resultant weakening of the company's financial position; inability to meet long-term obligations to the government and failure to maintain adequate shipping services for which the government had been subsidizing the line. One very important result of these circumstances, has been neglect of the company's fleet because of the inadequacy of maintenance expenditures. This condition, has in a large measure, made necessary the Commission's advance of up to $2,000,000 for ship repairs.

Other factors, of course, had contributed, but the fact remains that upon the management rests the primary responsibility for the company's present regrettable position. Minor factors involved have included strikes, changes in legal requirements as to citizenship of crews, and additional safety-at-sea requirements promulgated by the Congress to prevent such disasters as we have had in the not distant past.

The Commission has given long and diligent attention to the entire Dollar problem, Chairman Land explained, because of its vital importance to our foreign trade and national defense. Records of the Commission's Secretary disclose that one or another aspect of the Dollar problem has engaged the Commission's attention at more than 100 regular meetings. In addition, nearly a score of special meetings have been held on the subject.

Examination of the records of these meetings, Chairman Land said, show that the Commission has constantly sought a
731 type of management commensurate with the importance of the company's world-wide shipping interests and the public interest therein involved.

The Commission's immediate objective, he added, has been the maintenance and protection of an adequate American flag service from the West Coast to the Orient; protection of the government's investment in the Company by reason of past ship sales and ship construction notes, and to treat fairly and equitably the creditors, who have during the past few years been an important factor in keeping the company alive.

732 *Exhibit G*

UNITED STATES MARITIME COMMISSION,
Washington, July 6, 1943.

Immediate Release

The Maritime Commission announced today that it is giving consideration to the possibility of bringing about private ownership of the American President Lines.

The announcement said: "The Commission is giving consideration to the possibility of bringing about private ownership of the American President Lines at the appropriate time. Parties who desire to submit comprehensive and definite proposals with that end in view should place the same in the hands of the Commission not later than September 15, 1943."

This announcement is in answer to a number of inquiries received by the Commission as to its policy with respect to the ownership of the company.

The American President Lines company was formerly the Dollar Steamship Lines, Inc., Ltd., well known for its trans-Pacific and Around-the-World services operated by it for many years. As a result of serious financial difficulties the Company was reorganized in 1938, largely under the direction of the Maritime Commission which took measures to insure the continuation of the services in these essential trade routes.

In the reorganization the name of the Company was changed to "American President Lines, Inc.". Some of the debts of the Company were covered by debentures and preferred stock, and the Maritime Commission, to protect its interests and insure continuation of service, came into possession of 80 per cent of the common stock. Although the Commission had full voting control, it caused the Company to be operated by a Board of Directors which included representative local interests of San Francisco and former creditors of the concern.

In connection with the reorganization the Company incurred heavy indebtedness for working capital purposes and to put its fleet of vessels into proper operating condition. This indebtedness has since been paid off.

Dr. Henry F. Grady of San Francisco, former Assistant Secretary of State, and former Dean of the College of Commerce of the University of California, is President of the American President Lines.

733 In the District Court of the United States for the District of Columbia

Civil Action No. 31468

IN THE MATTER OF R. STANLEY DOLLAR (AN INDIVIDUAL), ET AL.

vs.

EMORY S. LAND (CHAIRMAN, UNITED STATES MARITIME COMMISSION), ET AL.

Affidavit

Filed Nov. 15, 1945

CITY OF WASHINGTON,
District of Columbia, ss:

Emory S. Land, being first duly sworn, deposes and says:

1. That he and the other defendants herein are now restrained by order of this Honorable Court from disposing of stock in American President Lines, Ltd., for which substantial offers have been received by the United States Maritime Commission for sums of money aggregating millions of dollars.

2. That the stock, being that of a corporation engaged in steamship operation, is liable to fluctuate, and was without substantial market value at a comparatively recent date, to wit: in the year 1938.

3. That said offers to buy were made more than 30 days ago, and that, in the opinion of affiant, if defendants be further restrained or prevented from accepting one of said offers and disposing of said stock the United States of America may suffer serious financial loss; and that in addition the Maritime Commission will, therefore, be hampered and impeded in the performance of its duties under the Merchant Marine Act, 1936, and other laws of the United States.

4. That the amount of damage which may be suffered by the United States of America, in the event of further restraint, cannot be accurately estimated in dollars and cents, but in the opinion of affiant a reasonable financial estimate of such damage which may be suffered exceeds the sum of Two Million Dollars.

And further deponent saith not.

Emory S. Land
EMORY S. LAND.

November 13, 1945.

CITY OF WASHINGTON,
District of Columbia, ss.

Emory S. Land, being duly sworn, says that he is one of the defendants in this case, that he has read the foregoing affidavit, and that all statements made therein are true and correct, save that allegations stated to be made upon information and belief he verily believes to be true and correct.

[SEAL] JENNIE G. ARONSTEIN,
Notary Public in and for the District of Columbia.

My Commission expires June 14, 1949.

734 In the District Court of the United States for the District of Columbia

Civil Action No. 31468

IN THE MATTER OF R. STANLEY DOLLAR (AN INDIVIDUAL), ET AL.

vs.

EMORY S. LAND (CHAIRMAN, UNITED STATES MARITIME COMMISSION), ET AL.

Affidavit

Filed, Nov. 15, 1945

CITY OF WASHINGTON,
District of Columbia, ss.

A. J. Williams, being first duly sworn, deposes and says:

1. That he is Secretary of the United States Maritime Commission.

2. That as shown by the records of the United States Maritime Commission the Commission since October 26, 1938, has delivered, or caused to be delivered, to American President Lines, Ltd., nine modern ships, the construction cost of which was approximately $35,733,426.86, and the construction-differential subsidy with respect to said ships which the Commission paid, or caused to be paid, from funds of the United States of America, pursuant to Title V of the Merchant Marine Act, 1936, was the sum of $16,315,059.40.

3. That since January 1, 1940, and pursuant to an operating-differential subsidy contract entered into under Title VI of the Merchant Marine Act, 1936, the Commission has paid, or caused to be paid, to American President Lines, Ltd. as operating-differen-

tial subsidy, and from funds of the United States of America, the sum of $5,636,936.08.

And further deponent saith not.

A. J. Williams.
A. J. Williams.

Subscribed and sworn to before me, the undersigned authority, this 14th day of November 1945.

[SEAL] Jennie G. Aronstein,
Notary Public.

My Commission expires June 14, 1949, in and for the District of Columbia.

735 In the District Court of the United States for the District of Columbia

Civil Action No. 31468

R. Stanley Dollar, et al., plaintiffs

v.

Emory S. Land, Chairman, United States Maritime Commission, et al, defendants

Affidavit of John F. Sonnett

Filed, Nov. 26, 1945

City of Washington,
District of Columbia, ss.

John F. Sonnett, being duly sworn, deposes and says:

I am the Assistant Attorney General of the United States in charge of this litigation on behalf of the defendants in this action.

In the course of preparing the defense of the suit, I have procured from the Commissioner of Internal Revenue photostatic copies of the joint income tax returns (Forms 1040) for the calendar year of 1938, of the following named individuals; and of the income and excess-profits tax return (Form 1120) for the calendar year of 1938, of the following named corporation, all of 311 California Street, San Francisco, California: H. M. and M. J. Lorber, R. Stanley Dollar and Esther J. Dollar, Dollar Steamship Line (California). Copies of these returns are attached hereto and made a part hereof.

The Court's attention is directed particularly to the following:

(1) Schedule F attached to the joint return of H. M. and M. J. Lorber, in which the following long-term loss, among others, from sales of capital assets is reported:

736 Kind of Property: 9,174 Shs. Dollar SS Line Inc., Ltd. Stock.
Date Acquired: 9/16/27.
Date Sold: 8/25/38.
Selling Price: Release of certain liabilities.
Cost: $128,444.31.
Gain or Loss: $128,444.31.
Gain or loss to be taken into account: 50%, Amount $64,222.15.

(2) Schedule F attached to the joint return of R. Stanley Dollar and Esther J. Dollar, in which the following long-term capital loss from sale of capital assets is reported:

"On August 15, 1938, there was entered into an 'Agreement Respecting Plan of Dollar Steamship Lines, Inc., Ltd', by and between the United States Maritime Commission, R. Stanley Dollar and others.

"The agreement provides, among other things, that R. Stanley Dollar will surrender and transfer all his right, title and interest in and to certain shares of Class 'A' Stock of Dollar Steamship Lines Inc., Ltd., which transfer was duly executed within the year 1938.

"The cost of the stock so surrendered is represented as follows:

	TOTAL				
Number of shares	35,803	13,760	7,630	513	14,000
Date acquired		Year 1929	Year 1929	Year 1933	Year 1930
Date transferred		8/15/38	8/15/38	8/15/38	8/15/38
Gross sales price	-	Nil	Nil	Nil	Nil
Cost	295,697.51	141,942.10	140,930.41	12,825.00	Nil
Loss	295,697.51	141,942.10	140,930.41	12,825.00	Nil

737 (3) Schedule I attached to the corporation income and excess-profits tax return of Dollar Steamship Line (California), in which the following information is reported as "Bad Debts":

Security	Number shares	Date acquired	Cost
Class B Stock Dollar S. S. Lines, Inc., Ltd	1,872,210	1929	$2,456,406.26
Class A Stock Dollar S. S. Lines, Inc., Ltd	2,075	1938	
Class A Stock Dollar S. S. Lines, Inc., Ltd	237,760	1938	1,415,972.24
Total cost			3,872,378.50
Management contract valued at $4.00 written off-cancelled			1.00
			3,872,379.50

Cost of stock acquired 1938 allocated on following basis:

Written off upon transfer free and clear to U. S. Maritime Commission under agreement dated August 15, 1938 and supplement

dated August 19, 1938—See "Agreement respecting Adjustment Plan of Dollar Steamship Lines, Inc., Ltd."

"Agreement dated July 18, 1938, accepted offer of The Robert Dollar Co. to give Dollar Steamship Line (Cal.) 227,790 shares class B capital stock Dollar Steamship Lines, Inc., Ltd., and 2,075 shares class A stock Dollar Steamship Lines, Inc., Ltd.; together with all office furniture equipment, furnishings and fixtures now located in the leased offices now used and occupied by Dollar Steamship Lines, Inc., Ltd., together with all automobiles used in the business of Dollar Steamship Lines, Inc., Ltd., and to give a termination and cancellation of that certain management agreement between Dollar Steamship Line (Calif.) and The Robert Dollar Co., dated June 23, 1926, in return for:

"Payment and satisfaction in full of that certain demand note executed by the Robert Dollar Co. in favor of Dollar Steamship Lines, Ltd., (Hong Kong) dated March 1, 1938, for the principal sum of $1,515,973.24, as well as release from liability under agreement between Dollar Steamship Lines, Inc., Ltd., and Matson Navigation Co., dated April 23, 1930 and mutual releases by Dollar Steamship Line (Cal.) and The Robert Dollar Co. from any and all liabilities each to the other.

38 Note of The Robert Dollar Co. in favor of Dollar Steamship Lines, Ltd., (Hong Kong)—Cancelled		$1,515,973.24
227,790 shares class B and 2,075 shares class A stock of Dollar Steamship Lines, Inc., Ltd	$1,415,972.24	
Office equipment, furniture, furnishings and fixtures and automobiles received	100,000.00	
Cancellation of management agreement between Dollar Steamship Line (Cal.) and The Robert Dollar Co	1.00	
Note cancelled		1,515,973.24
Stocks and other consideration received	1,515,973.24	

John F. Sonnett.
JOHN F. SONNETT.

Subscribed and sworn to before me this 26th day of November 1945.

GLADYS E. MCGAFFEY,
Notary Public.

My Commission expires 9/30/48.
Copy received Nov. 26, 1945.

CLINTON M. HESTOR,
By W. E. KOHEN,
Counsel for Plaintiffs.

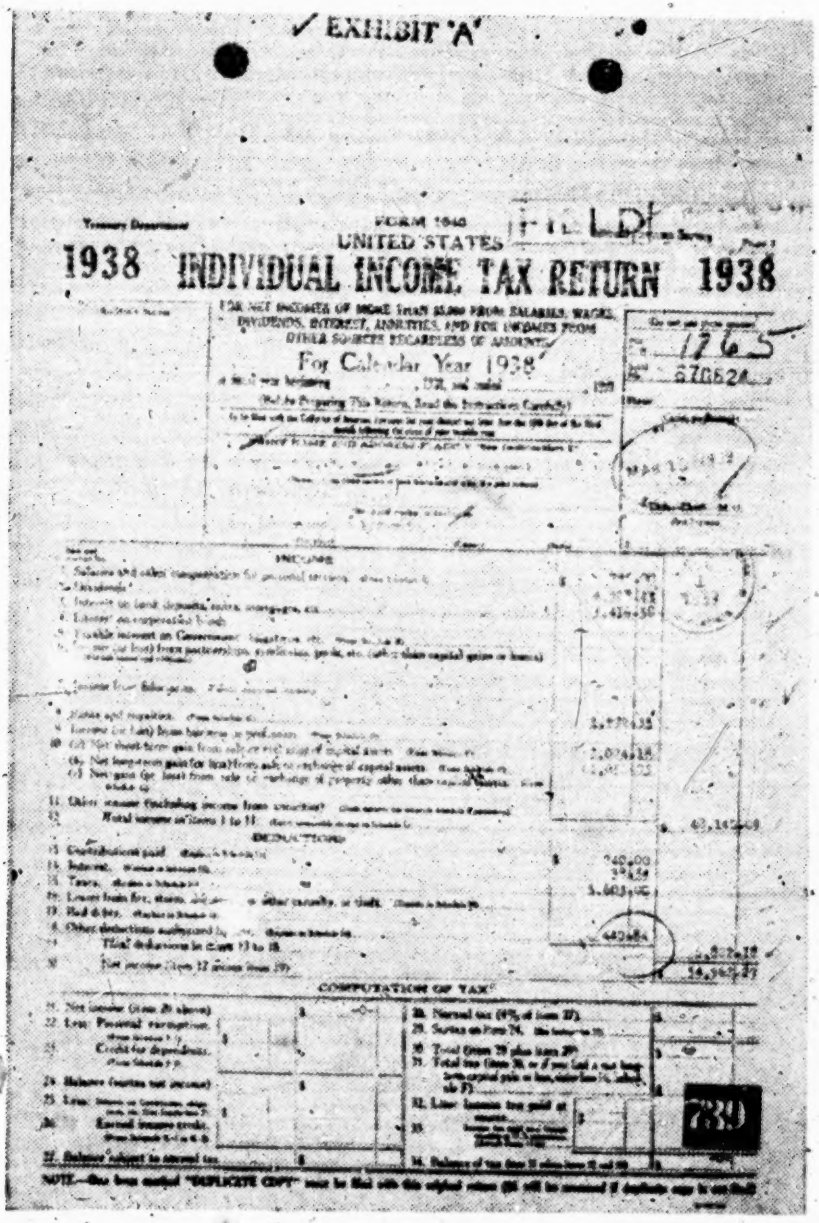


EXHIBIT 'A'

Treasury Department

FORM 1040

UNITED STATES

1938 INDIVIDUAL INCOME TAX RETURN 1938

FOR NET INCOMES OF MORE THAN $5000 FROM SALARIES, WAGES, DIVIDENDS, INTEREST, ANNUITIES, AND FOR INCOMES FROM OTHER SOURCES REGARDLESS OF AMOUNT

For Calendar Year 1938

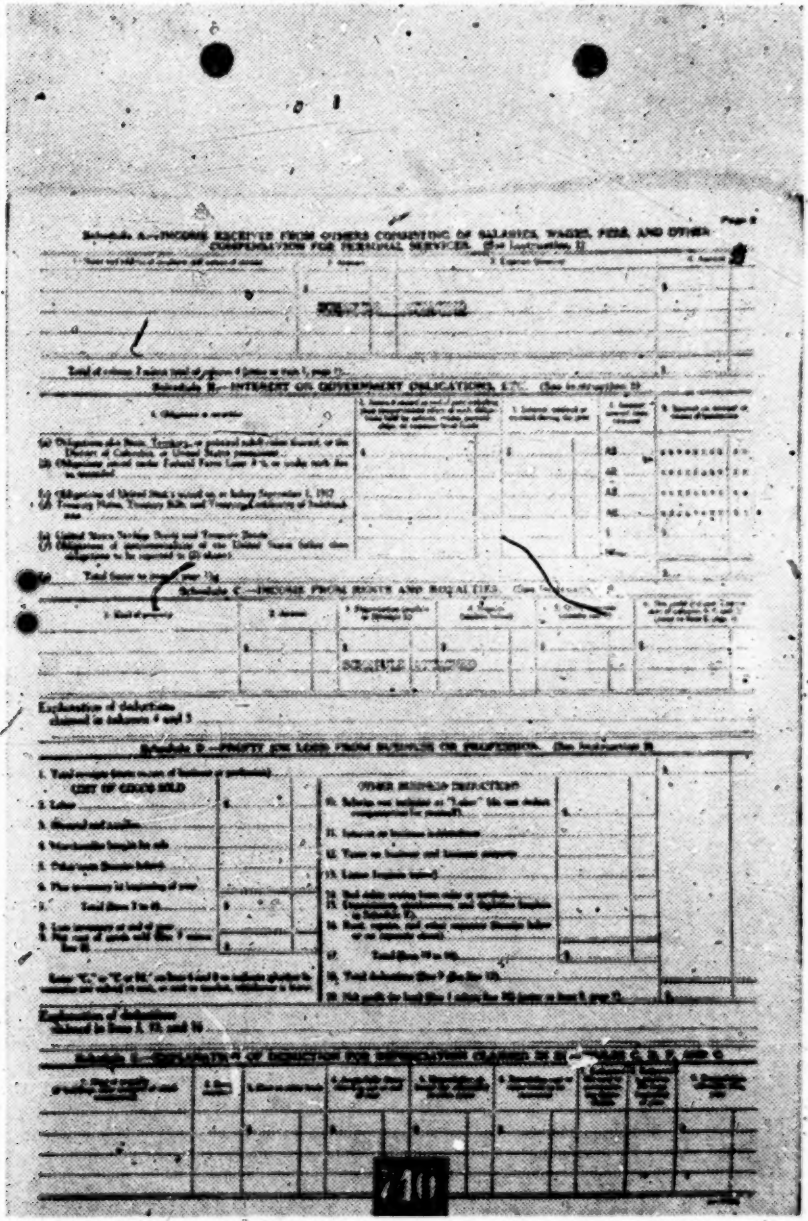
1065

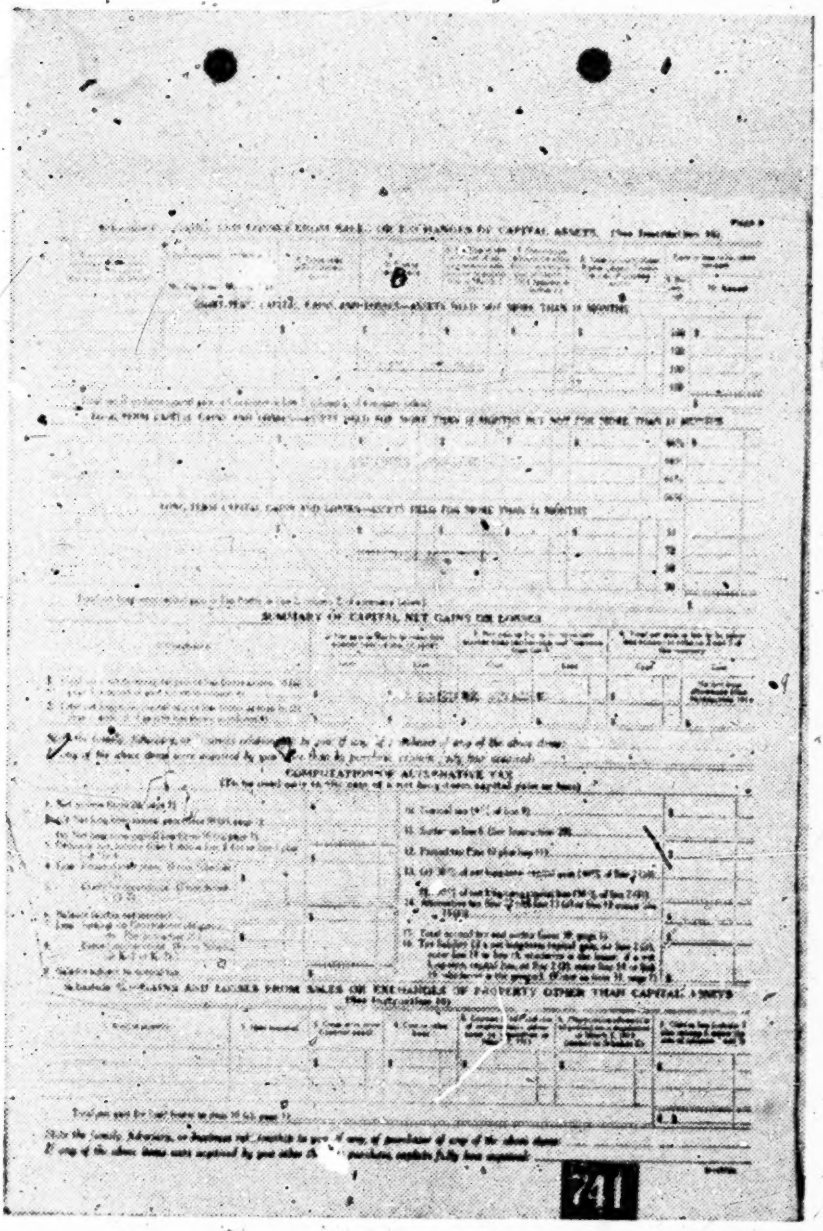
INCOME

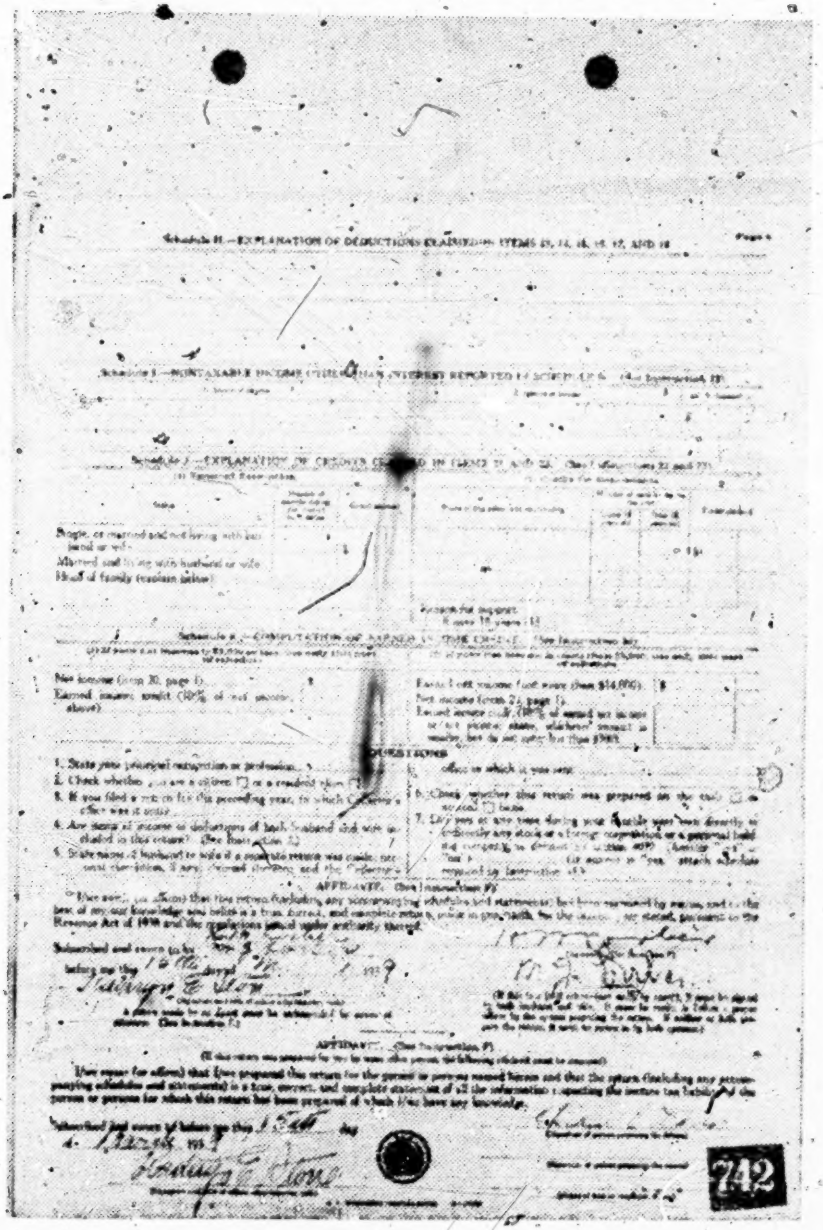
DEDUCTIONS

COMPUTATION OF TAX

NOTE—One form marked "DUPLICATE COPY" must be filed with the original return (it will be examined if duplicate copy is not filed)




SUMMARY OF CAPITAL NET GAINS OR LOSSES
COMPUTATION OF ALTERNATIVE TAX
741



Schedule H.—EXPLANATION OF DEDUCTIONS EXAMINED ON ITEMS 13, 14, 15, 16, 17, AND 18

Schedule I.—EXPLANATION OF CREDITS CLAIMED IN ITEMS 21 AND 22

Single, or married and not living with husband or wife

Married and living with husband or wife

Head of family (explain below)

Net income (item 20, page 1)

Earned income credit (10% of net income above)

Earned net income (not more than $14,000)

Net income from 2c, page 1)

Earned income credit (10% of earned net income or net income shown, whichever amount is smaller, but not more than $300)

QUESTIONS

1. State your principal occupation or profession.

2. Check whether you are a citizen ☐ or a resident alien ☐

3. If you filed a return for the preceding year, to which collector's office was it sent?

4. Are items of income or deductions of husband and wife included in this return? (See instruction 5.)

5. State name of husband or wife if a separate return was made, the amount thereof, if any, claimed as exemption, and the reasons

6. Check whether this return was prepared on the cash ☐ or accrual ☐ basis.

7. Did you at any time during your taxable year own directly or indirectly any stock of a foreign corporation, or a personal holding company, as defined in section 407? (See instruction 7.) If answer is "Yes," attach schedule required by instruction 7.

AFFIDAVIT. (See instruction 19.)

I (We each) do (does) that this return (including any accompanying schedules and statements) has been examined by me (us), and is (are) to the best of my (our) knowledge and belief a true, correct, and complete return, made in good faith for the taxable year stated, pursuant to the Revenue Act of 1936 and the regulations issued under authority thereof.

Subscribed and sworn to before me this 15th day of March, 1937

Notary Public

(If this is a joint return of husband and wife, it must be signed by both husband and wife. If made by agent, power of attorney must be filed with the collector. If return is made by a fiduciary, proper evidence of his appointment must be furnished.)

AFFIDAVIT. (See instruction 19.)

(If the return was prepared for the person by some other person, the following should be executed)

I (We each) do (does) that I (we) prepared this return for the person or persons named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information appearing therein to the best of the knowledge of the person or persons for whom this return has been prepared of which I (we) have any knowledge.

Subscribed and sworn to before me this 15th day of March, 1937

Notary Public

742

743 H. M. & M. J. LORBER FEDERAL INCOME TAX RETURNS 1938

SALARIES AND OTHER COMPENSATION

Schedule A—Item 1

Directors' Fees:

Dollar Steamship Lines Inc., Ltd.	$ 25.00
Dollar Steamship Line (California)	280.00
American Mail Line	200.00
Admiral Oriental Line	140.00
Robert Dollar Co.	50.00
Dollar Terminal S. S. Co.	100.00
Pacific S. S. Lines Ltd.	20.00
	795.00

744 Rents—Item

College Avenue Property		$2,219.80	
Repairs	$236.81		
Insurance	70.00		
Depreciation 2% on $10,000.00	200.00		
		506.81	1,712.99
Alameda Property:			
Repairs	66.00		
Depreciation 5% on $4,500.00	225.00		
		291.14	197.36
			62.00
			1,972.35

CONTRIBUTIONS

First Church San Mateo	720.00
Red Cross	20.00
	740.00

INTEREST

On additional Federal Tax:	
M. J. L.	37.62
H. M. L.	.72
	38.34

745 Schedule "D"

SHORT TERM CAPITAL GAINS AND LOSSES—LESS THAN 18 MONTHS

Kind of property	Date acquired	Date sold	Selling price	Cost	Gain or loss	Percent	Gain or loss to be taken into account, amount
100 shares Standard Oil Ind	12/2/37	1/19/38	$3,372.24	$3,295.50	$76.74	100	$76.74
25 shares American Can	12/2/37	2/23/38	2,247.87	2,157.93	89.94	100	89.94
300 shares Houston Oil	12/16/37	2/25/38	2,527.46	2,067.60	459.86	100	459.86
100 shares Southern Pacific Ry	3/28/38	6/6/38	1,089.47	1,094.00	4.53	100	4.53
100 shares Southern Pacific Ry	3/30/38	7/22/38	2,024.95	978.80	1,046.15	100	1,046.15
3M shares Southern Pacific Ry	6/7/38	11/3/38	1,602.44	1,189.70	412.74	100	412.74
50 shares American Tobacco	9/24/37	10/13/38	4,464.59	3,546.94	917.65	100	917.65
75 rights Phillip's Petroleum	8/19/38	8/19/38	25.63		25.63	100	25.63
Total net short term capital gain			17,354.65	14,330.47			3,024.18
18 TO 24 MONTHS							
5M Great Northern Ry 5s	4/23/36	1/6/38	$5,114.21	$3,606.12	$491.91	66⅔	$327.94
OVER 24 MONTHS							
100 shares American Cyanamid B	7/3/35	3/16/38	$2,272.80	$2,167.83	$104.97	30	$52.98
100 shares Continental Oil	7/5/33	5/23/38	2,425.70	1,895.36	630.34	30	310.17
4M shares Sansom Tire & Rubber Co. 6½	12/23/31	12/31/38	4,000.00	2,040.00	1,960.00	50	980.00
House and lot, 3003 Jackson St., Alameda	Sept. 1929	Jan. 1938	7,755.95	4,459.93	3,295.18	50	1,647.56
Lot 16 Claremont Park, Berkeley, Calif	12/28/27	11/25/38	2,611.50	2,800.20	194.70	50	97.35
9174 shares Dollar S. S. Line, Inc., Ltd. stock	9/16/27	9/25/38	Release of certain liabilities	128,444.31	128,444.31	50	64,222.15
						30	
			19,065.95	141,728.63	122,658.38		61,656.73

746

Taxes Item 15

City & County S. F.	$315.65
San Mateo City	1,042.87
San Mateo County	2,573.62
City of Piedmont	209.74
Alameda County	855.12
Town of Hillsborough	124.28
City of Alameda	36.32
City of Berkeley	24.58
Sonoma County	38.60
California State Income Tax H. M. L.	178.81
California State Income Tax M. J. L.	171.31
California State Auto Tax (Licences)	32.10
	5,603.00

Other Deductions Item 19

Investment Counsel	440.84

EXHIBIT "B"

FORM 1040
UNITED STATES

1938 INDIVIDUAL INCOME TAX RETURN 1938

FOR NET INCOMES OF MORE THAN $5,000 FROM SALARIES, WAGES, DIVIDENDS, INTEREST, ANNUITIES, AND FOR INCOMES FROM OTHER SOURCES REGARDLESS OF AMOUNTS

For Calendar Year 1938

REVIEWED
By A. C. Thom
DATE 3-10-1939

PRINT NAME AND ADDRESS PLAINLY

R. Stanley Dollar and Esther F. Dollar
311 California Street
San Francisco, San Francisco, California

INCOME

1. Salaries, wages, other compensation for personal services		17,820 00
2. Dividends		35,007 42
3. Interest on bank deposits, notes, mortgages, etc		4,738 10
4. Interest on corporate bonds		175 00
5. Taxable interest on Government obligations, etc		
6. Income (or loss) from partnerships, syndicates, pools, etc (other than capital gains or losses)		
[illegible] Beverly Hills, Calif.		2,217 42
[illegible], San Francisco, Calif.		4,022 42
7. Income from fiduciaries		
8. Rents and royalties		
9. Income (or loss) from business or profession		3,842 28
10. (a) Net short-term gain from sale or exchange of capital assets		22 20
(b) Net long-term gain (or loss) from sale or exchange of capital assets		173,348 75
(c) Net gain (or loss) from sale or exchange of property other than capital assets		
11. Other income (including income from annuities, [illegible] profit from installment sale		547 03
12. Total income in items 1 to 11		389,343 12

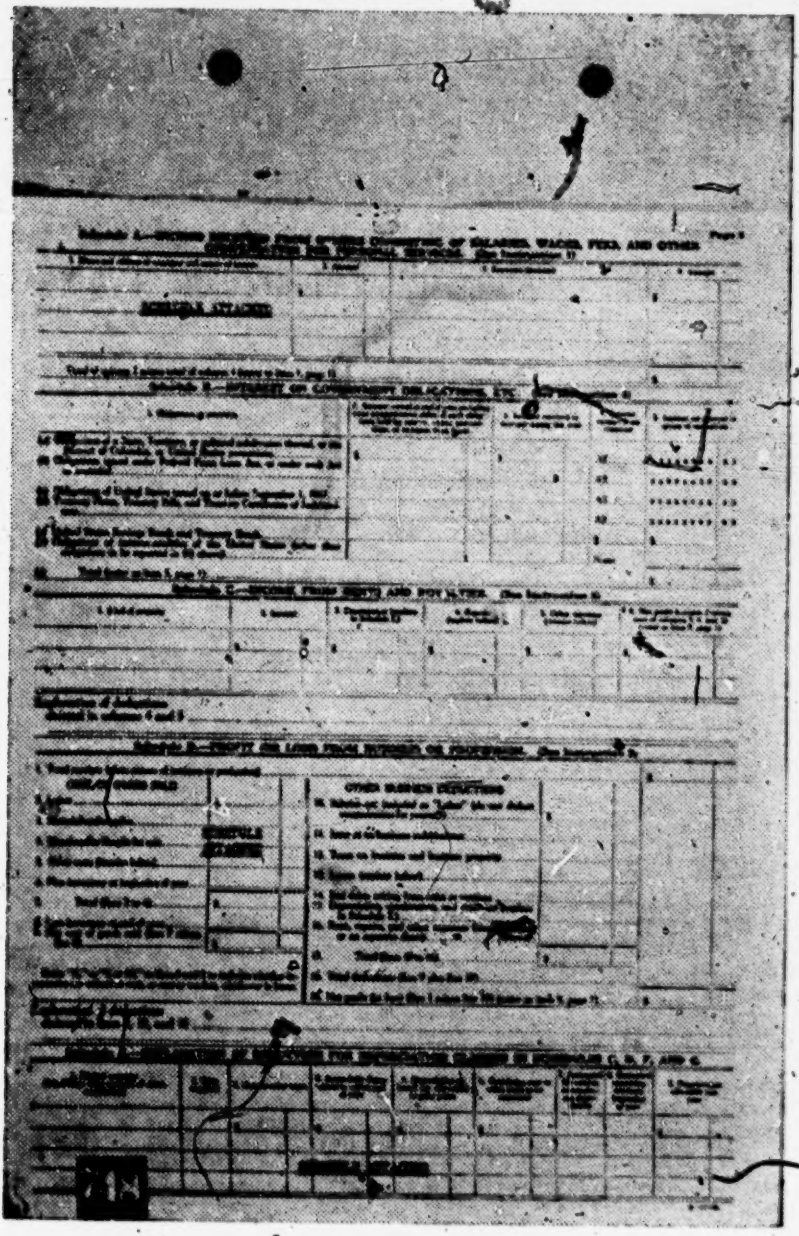
DEDUCTIONS

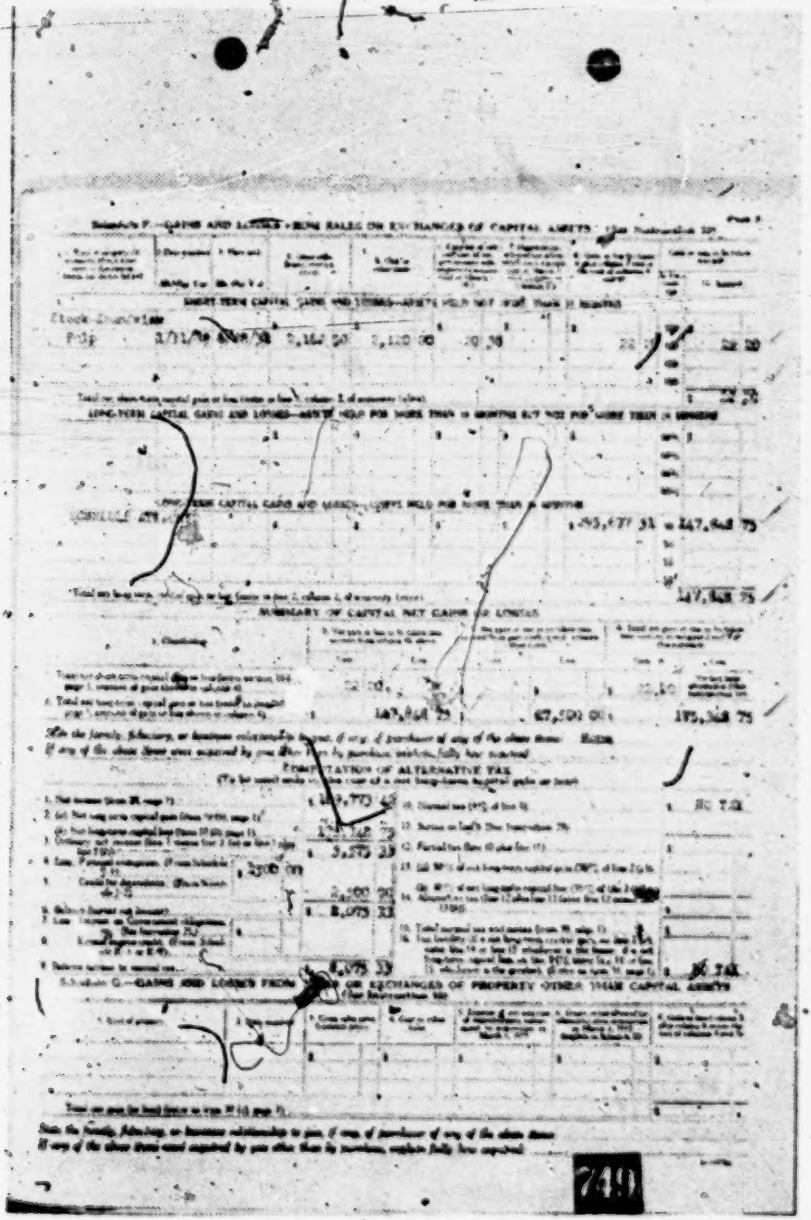
13. Contributions paid		(773 28)
14. Interest		2,583 42
15. Taxes		6,860 92
16. Losses from fire, storm, ship wreck, or other casualty, or theft		
17. Bad debts		
18. Other deductions authorized by law		
19. Total deductions in items 13 to 18		10,670
20. Net income (item 12 minus item 19)		389,772 42

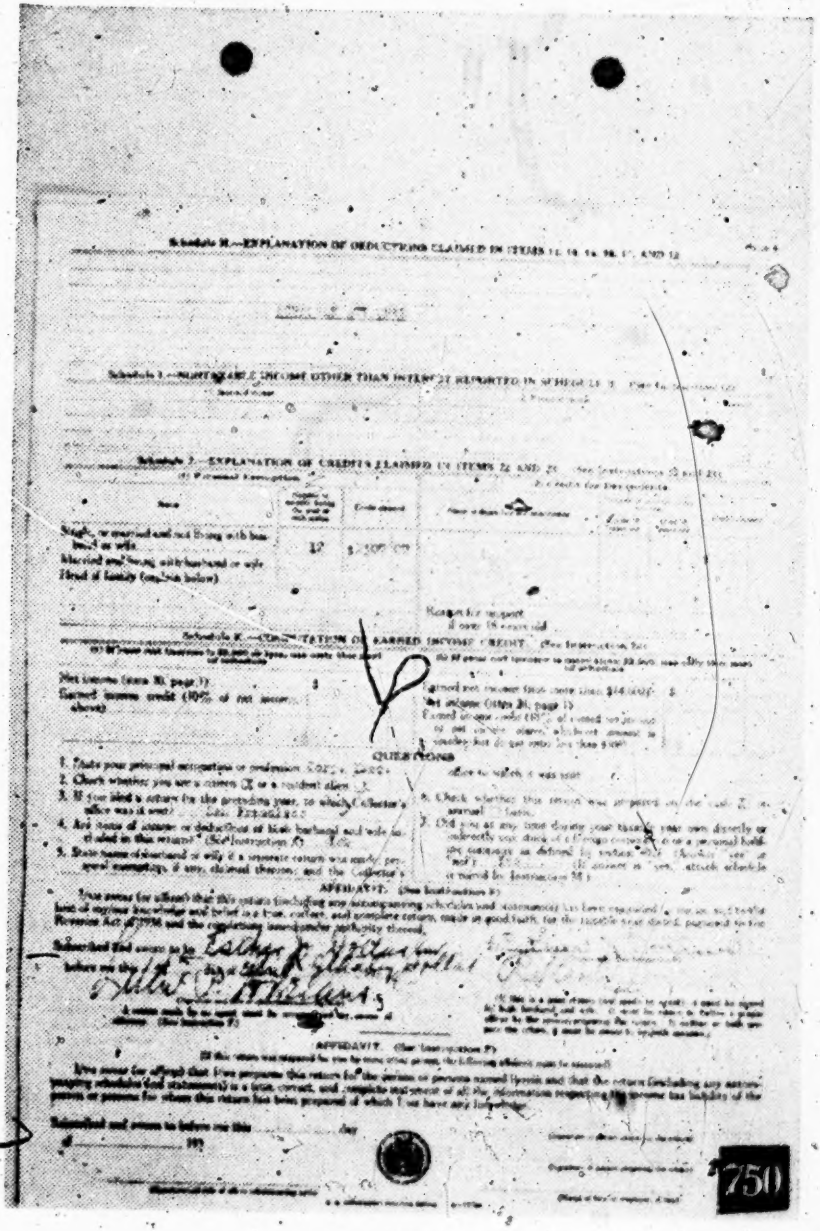
COMPUTATION OF TAX

21. Net income (item 20 above)	$ 389,772 42	29. Normal tax (4% of item 27)		NO TAX
22. Less: Personal exemption	$2500 00	30. Surtax on item 24		
23. Credit for dependents	2,500 00	31. Total (item 29 plus item 30)		
24. Balance (surtax net income)	$ 387,272 42	32. Total tax (item 31, or if you had a net long-term capital gain or loss, enter line 4, Schedule D)		
25. Less: Interest on Government obligations, etc		33. Less: Income tax paid at source		.747
26. Earned income credit		34.		
27. Balance subject to normal tax	$ 387,272 42	35. Balance of tax (item 32 minus items 33 and 34)		NO TAX

NOTE.—One form marked "DUPLICATE COPY" must be filed with this original return (It will be returned if duplicate copy is not filed)







Schedule H.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS

Schedule J.—MAINTENANCE INCOME OTHER THAN INTEREST REPORTED IN SCHEDULE

Schedule J.—EXPLANATION OF CREDITS CLAIMED IN ITEMS 24 AND 25

Name

Single, or married and not living with husband or wife

Married and living with husband or wife

Head of family (explain below)

Schedule K.—COMPUTATION OF EARNED INCOME CREDIT

Net income (item 30, page 1)

Earned income credit (10% of net income above)

QUESTIONS

1. State your principal occupation or profession
2. Check whether you are a citizen or a resident alien
3. If you filed a return for the preceding year, to which Collector's office was it sent?
4. Are terms of income or deductions of husband and wife included in this return? (See Instruction 5)
5. State name of husband or wife if a separate return was made, period covered, if any, the total income, and the Collector's

6. Check whether this return was prepared on the cash or accrual basis
7. Did you at any time during your taxable year own directly or indirectly voting stock of a foreign corporation or a personal holding company as defined by section

AFFIDAVIT. (See Instruction 6)

I (or we) swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me (or us) and is to the best of my (our) knowledge and belief a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1936 and the regulations issued under authority thereof.

Subscribed and sworn to before me this

AFFIDAVIT. (See Instruction 7)

If this return was prepared for the taxpayer by any person other than a deputy of the Commissioner, the following affidavit must be executed:

I (or we) swear (or affirm) that I (or we) prepared this return for the person or persons named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the income tax liability of the person or persons for whom this return has been prepared of which I (or we) have any knowledge.

Subscribed and sworn to before me this

750

751 R. STANLEY DOLLAR AND ESTHER J. DOLLAR 1938 INCOME TAX RETURN

Schedule F—Long Term Capital Loss:

On August 15, 1938, there was entered into an "Agreement Respecting Plan of Dollar Steamship Lines, Inc., Ltd.," by and between the United States Maritime Commission, R. Stanley Dollar and others.

The agreement provides, among other things, that R. Stanley Dollar will surrender and transfer all his right, title, and interest in and to certain shares of Class "A" Stock of Dollar Steamship Lines, Inc., Ltd., which transfer was duly executed within the year 1938.

The cost of the stock so surrendered is represented as follows:

	TOTAL				
Number of shares	35,893	13,760	7,620	513	14,000
Date acquired		Year 1929	Year 1929	Year 1933	Year 1930
Date transferred		8/15/38	8/15/38	8/15/38	8/15/38
Gross sales price		Nil	Nil	Nil	Nil
Cost	295,697.51	141,942.10	140,930.41	12,825.00	Nil
Loss	295,697.51	141,942.10	140,930.41	12,825.00	Nil

752 Schedule A—Salaries and Other Compensation:

Olympic Refining Company, Long Beach—		
Salary	$12,000.00	
Less: Unemployment Insurance	150.00	
		$11,850.00
Dollar Steamship Lines, San Francisco—Director's Fees		550.00
American Mail Line, San Francisco—Director's Fees		200.00
Admiral Oriental Line, San Francisco—Director's Fees		140.00
Pacific Steamship Lines, San Francisco—Director's Fees		60.00
The Roberts Dollar Co., San Francisco—Director's Fees		20.00
		12,820.00

753 Item No. 2—Dividends:

Estand, Inc., San Francisco	87,000.00
Dollar Investment Co., San Francisco	7,500.00
Crown Zellerbach Co.	180.00
Texas Co.	116.00
Todd Shipbuilding Co.	400.00
Tidewater Associated Oil Co.	11.25
	15,207.25

754 Schedule D—Income (or Loss) From Business:

Dinero Dairies Operations

Income:	
United States Treasurer—a/c performance of soil building practice under Agricultural Conservation Program	$745.57
Rent	500.00
Sugar Beets	139.49
Miscellaneous	174.00
	1,559.06

Expenses:		
Sacramento County Taxes	$745.19	
Interest	1,132.62	
Miscellaneous	146.10	
Labor	1,377.47	
Utilities	95.15	
Depreciation	1,884.81	
		5,381.34
		3,822.28

755 Item 11—Profit From Installment Sales:

Description	Lot #17, Block #3, Lakeshore Highlands
Costs	$1,577.85.
Sales Price	$2,650.00.
Profit	$1,072.15.
% of Profit	40.46.
Collections 1938	$1,352.03.
Realized Profits	$547.03.

756 Schedule H—Contributions:

Community Chest of Oakland	350.00
Southern Bible Training School, Dallas, Texas	1,200.00
St. Paul's Church, Oakland, Calif	780.00
Mission Immanuel, Berkeley, Calif	1,800.00
Western Book & Tract Co.—Tract Fund	2,572.80
Miracle Book Club, Richmond, Calif	900.00
Camp Fire Girls' Assn	5.00
	7,607.80
Less: Amount in excess of 15% of Net Income Computed in Accordance With Sec. 23 (o) of the Revenue Act of 1938	6,627.84
	979.96

Schedule H—Interest:

Anglo California National Bank, San Francisco	1,586.07
Bank of America	4.63
Collector of Internal Revenue	425.64
California State Treasurer	2.92
Laura J. Knight	570.16
	2,589.42

Schedule H—Taxes:

Auto License Fees and Registration	81.40
California Personal Income Tax	968.13
County of Alameda—Property Tax	2,513.05
City of Oakland & County of Alameda—Property Tax	225.55
City of Piedmont, Calif.—Property Tax	1,460.24
Placer County, Calif.—Property Tax	1,211.16
Coos County, Oregon	6.57
Duty on Import Shipments	133.36
Stock Transfer Tax	69.44
Taxes on Club Dues	162.02
U. S. Forestry Service	30.00
	6,860.92

DINERO DAIRIES PROPERTY

Schedule of Depreciation Calendar Year 1938

Farm buildings (frame construction)	Date acquired	Estimated life from date acquired	Estimated remaining life from beginning of year	Cost	Accrued depreciation 12/31/37	Depreciation year 1938	Accrued depreciation 12/31/38	Depreciation 12/31/38
Dwelling houses, bunk houses, dairy house, dairy barns, feed barn, hay house outbuildings, etc.	10/31/33	10 years	5⅚ Years	$17,098.07	$7,124.21	$1,709.81	$8,834.02	$8,264.05
Milk barn No. 2	10/31/33	24⅙ years	20 years	501.18	85.11	20.89	105.91	395.27
Total farm buildings				17,599.25	7,209.32	1,730.61	8,939.93	8,659.32
Fences and corrals	10/31/33	10 years	6 years	381.50	158.96	38.15	197.11	184.39
Trucks and tractors:								
Chevrolet truck	10/31/33	2⅛ years		86.70	86.70		86.70	
Tractor	10/31/33	2⅛ years		60.69	60.69		60.69	
Lighting system for tractor	7/15/35	7 months		62.78	62.78		62.78	
International truck	3/13/35	6 years	3 years	238.00	115.38	41.33	156.71	81.29
Total trucks and tractors				458.17	325.55	41.33	366.88	91.29
Farm machinery and equipment	10/31/33	12 years	7 years	121.30	42.16	10.12	52.28	69.11
	10/31/33	13 years	8 years	69.36	22.25	5.34	27.59	41.77
	1934	14²⁷⁄₁₂ years	11 years	343.38	84.14	24.04	108.18	235.20
	1935	14³⁄₄ years	12 years	30.00	5.25	2.10	7.35	22.65
	1936	do	12³⁷⁄₁₂ years	473.09	56.24	33.12	99.36	373.73
Total farm machinery and equipment				1,037.32	220.04	74.72	294.76	742.46
Total depreciable property				19,476.14	7,913.87	1,884.81	9,798.68	9,677.46
Add: Cost of land				68,478.99				68,478.99
Total, December 31, 1938				87,955.13	7,913.87	1,884.81	9,798.68	78,156.45

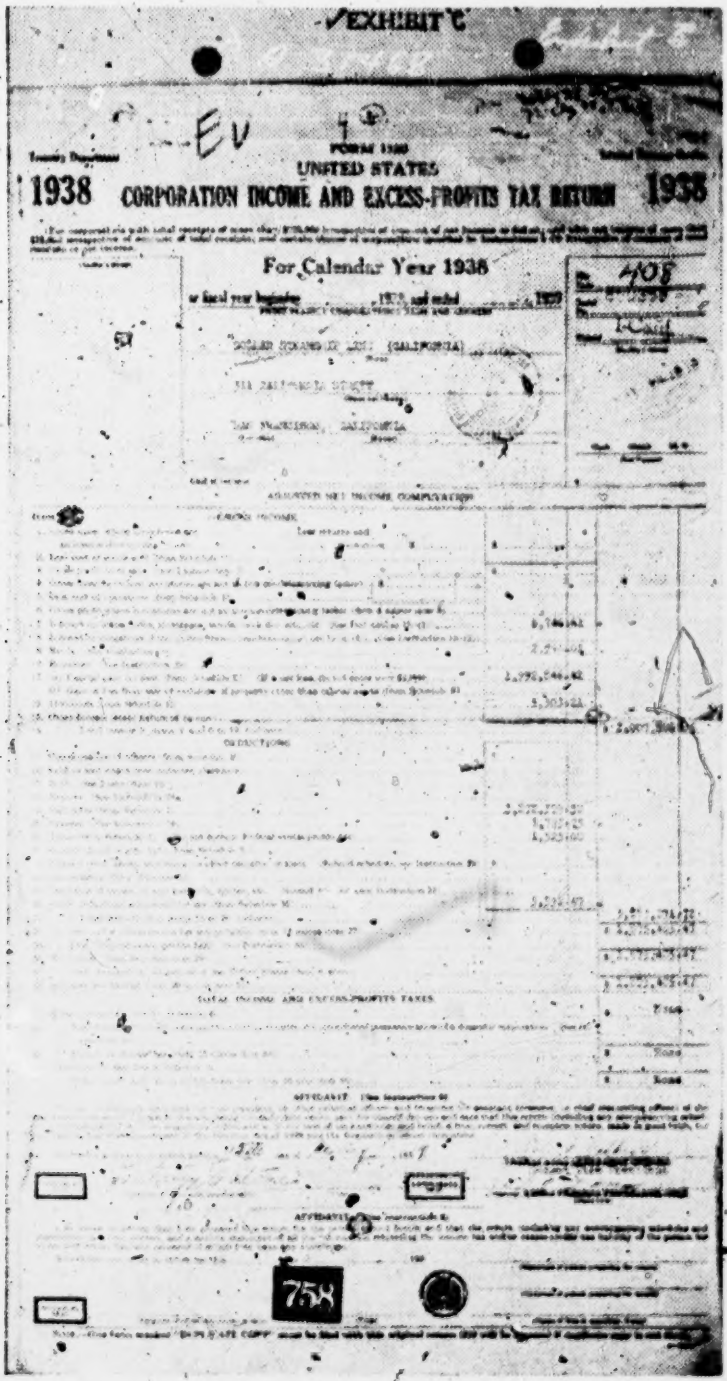


EXHIBIT C

FORM 1120

UNITED STATES

1938 CORPORATION INCOME AND EXCESS-PROFITS TAX RETURN 1938

For Calendar Year 1938

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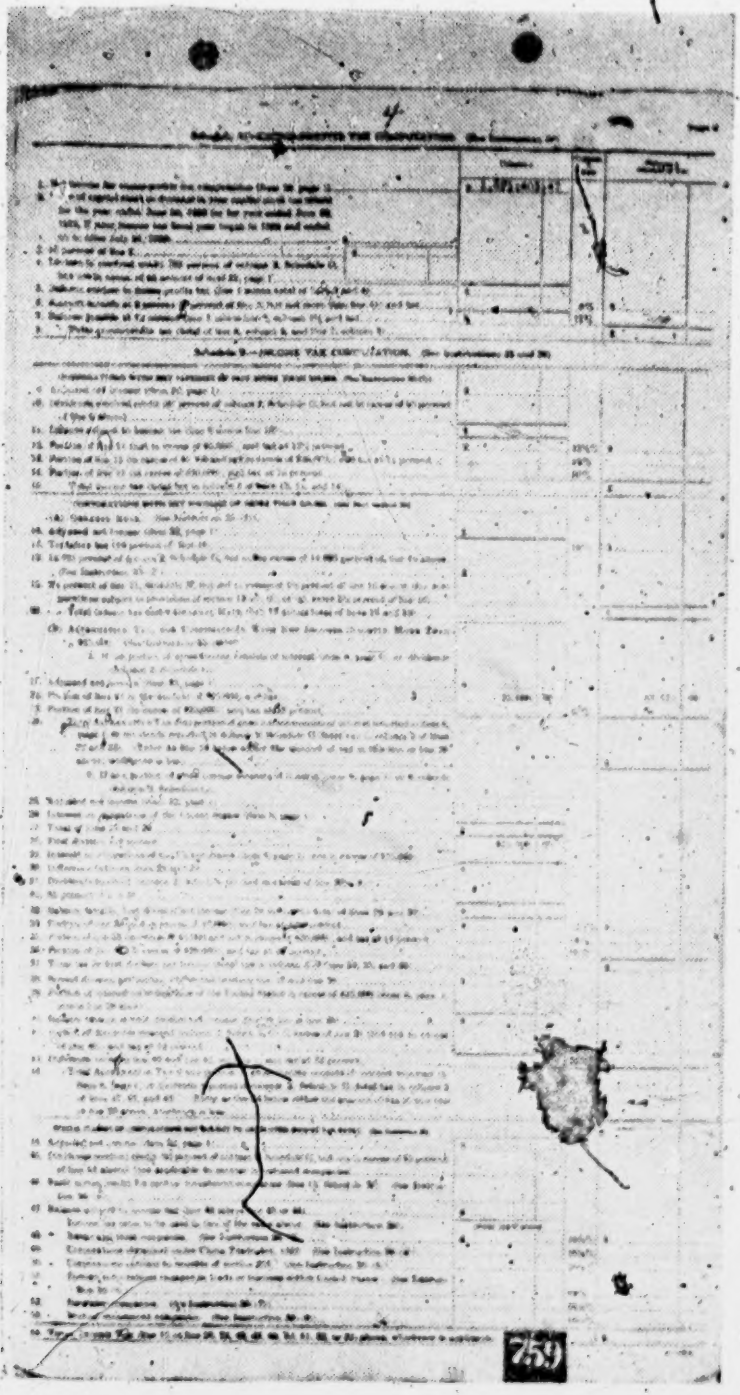

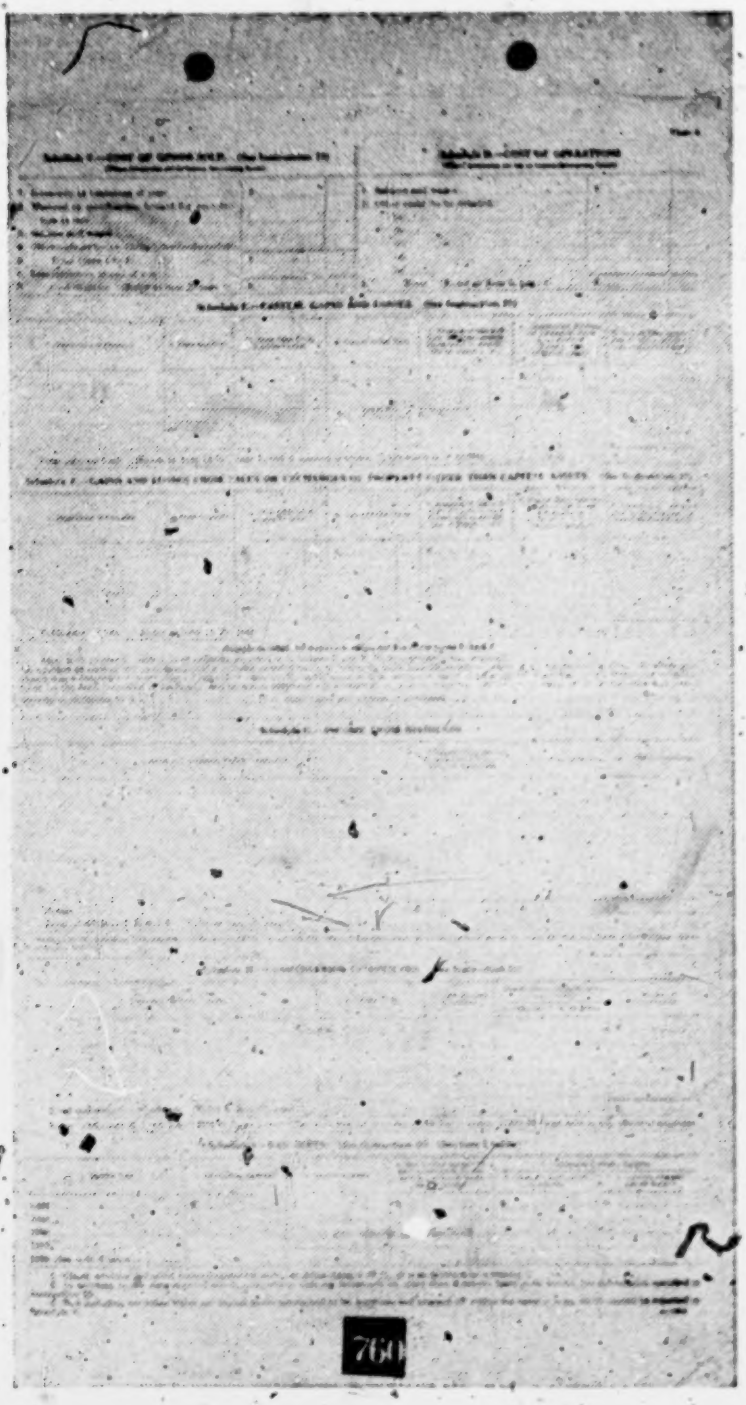

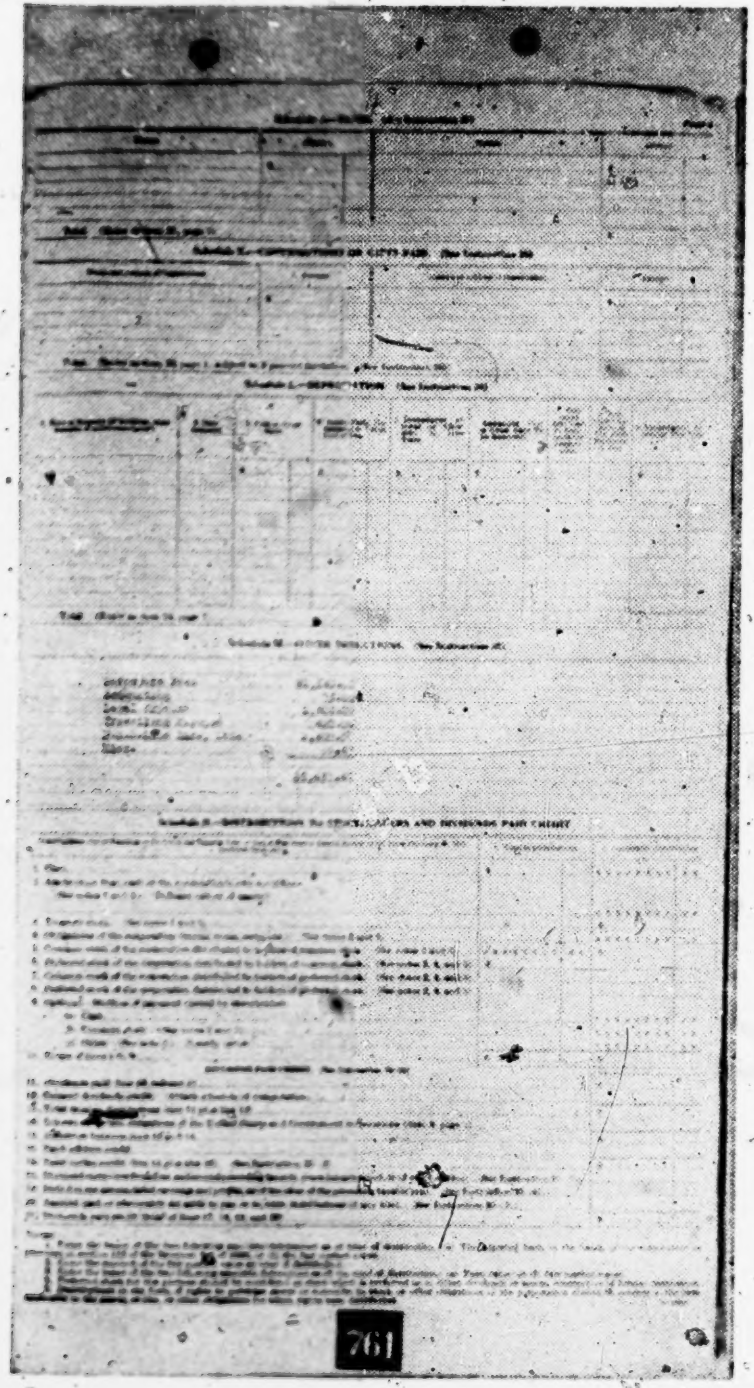

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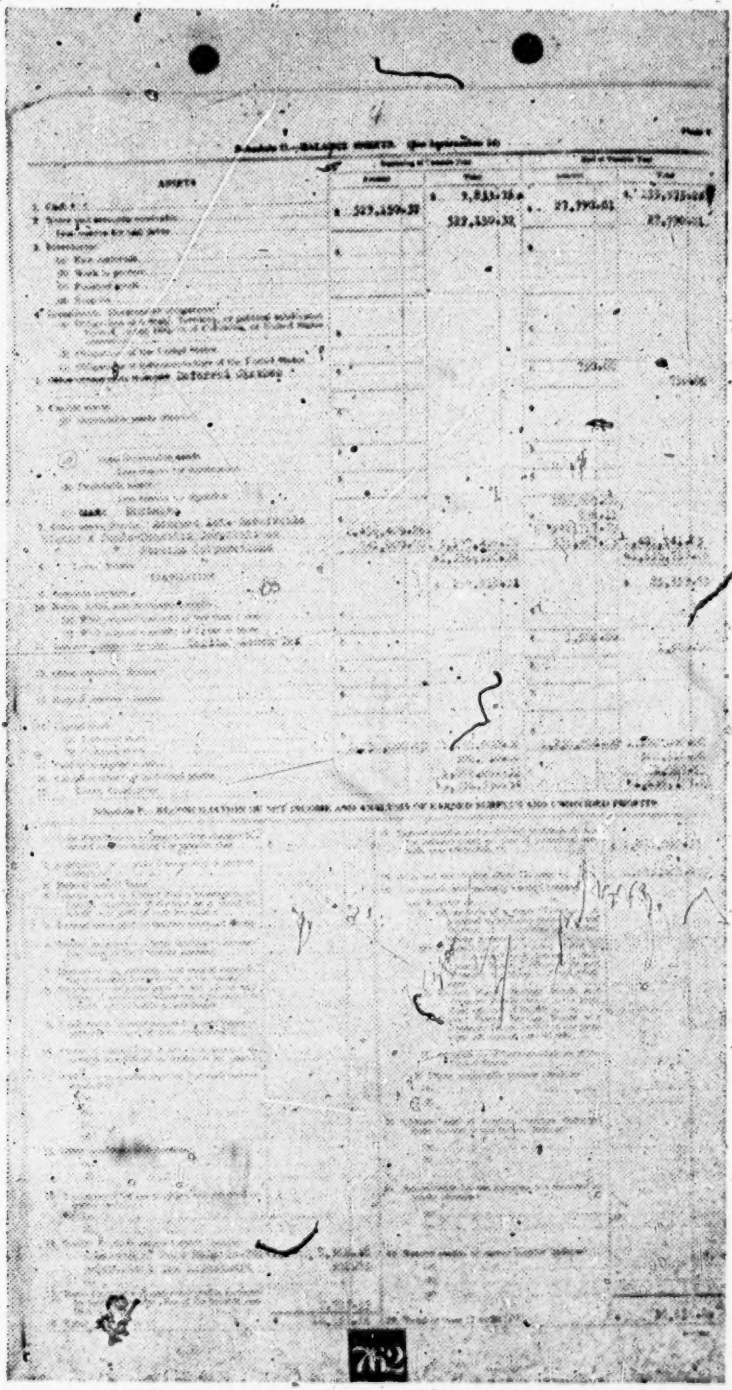

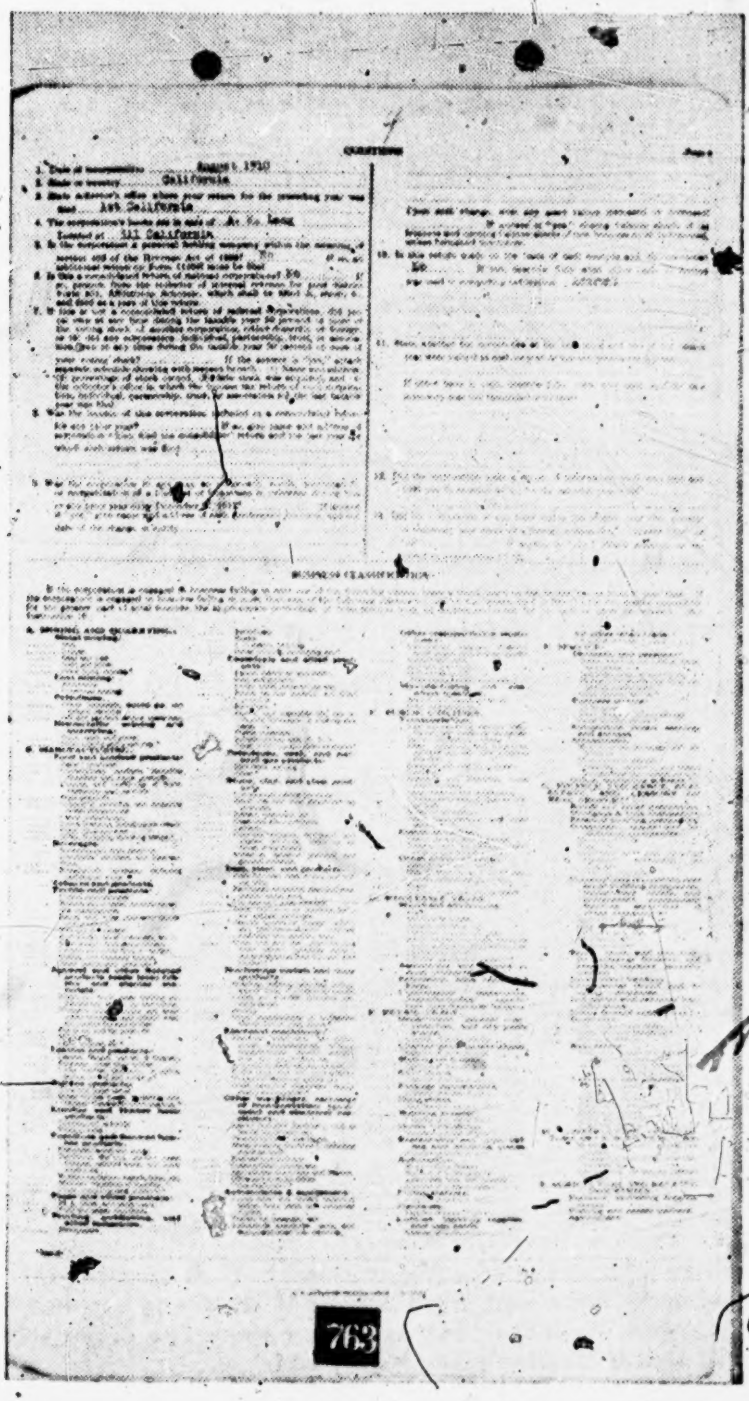

763

764 DOLLAR STEAMSHIP LINE (CALIFORNIA) 1938 INCOME TAX RETURN

Schedule E—Capital Gain or Loss

Profit realized per Books on Liquidation and dissolution of wholly owned subsidiary, Dollar SS Lines, Ltd		*$1,989,783.15
Less: Undistributed income Foreign Personal Holding Company (Dollar SS Lines, Ltd., Hong Kong) taken into income for 1938		5,303.21
		1,984,479.94
Add: Undistributed income Foreign Personal Holding Company (Dollar SS Lines, Ltd., Hong Kong) taken as loss for 1937		8,366.48
Net Profit		1,992,846.42

See form 958 filed for 1937 & 1938 Annual Information Return Foreign Personal Holding Company.

*Cost per Books	$741,000.00	
Liquidation Value Realized	2,730,783.15	
Profit	1,989,783.15	

	Cost	Yr. Acq.	Sale Price
Furniture, Fixtures, Furnishings, etc.	$100,000.00	1938	$100,000.00

765 Schedule I Bad Debts

Security	Number shares	Date acquired	Cost
Class B Stock Dollar S. S. Lines Inc., Ltd	1,872,210	1929	$2,456,406.26
Class A Stock Dollar S. S. Lines Inc., Ltd	2,075	1938	1
Class A Stock Dollar S. S. Lines Inc., Ltd	227,790	1938	1 1,415,972.24
Total cost			3,872,378.50
Management contract valued at $1.00 written off—cancelled			1.00
			3,872,379.50

[1] Cost of Stock acquired 1938 allocated on following basis:

Agreement Dated July 18, 1938, accepted offer of The Robert Dollar Co. to give Dollar Steamship Lines 227,790 shares class B capital stock Dollar Steamship Lines, Inc., Ltd. and 2,075 shares class A stock Dollar Steamship Lines, Inc., Ltd., together with all office furniture equipment, furnishings, and fixtures now located in the leased offices now used and occupied by Dollar Steamship Lines, Inc., Ltd., together with all automobiles used in the business of Dollar Steamship Lines, Ltd., and to give a termination and cancellation of that certain maangement agreement between Dollar Steamship Line (Calif.) and The Robert Dollar Co., dated June 23, 1926, in return for:

Payment and satisfaction in full of that certain demand note executed by the Robert Dollar Co. in favor of Dollar Steamship Lines, Ltd., (Hong Kong) dated March 1, 1938, for the principal sum of $1,515,973.24, as well as release from liability under agreement between Dollar Steamship Lines, Inc., Ltd., and Matson Navigation Co., dated April 23, 1930 and mutual releases by Dollar Steamship Line (Cal.) and The Robert Dollar Co. from any and all liabilities each to the other.

*Written off upon transfer free and clear to U. S. Maritime Commission under agreement dated August 15, 1938, and supplement dated August 19, 1938—See "Agreement respecting Adjustment Plan of Dollar Steamship Lines, Inc., Ltd."

766 In the District Court of the United States for the District of Columbia

Civil Action No. 31468

R. STANLEY DOLLAR, ET AL., PLAINTIFFS

v.

EMORY S. LAND, ETC., ET AL., DEFENDANTS

Order, judgment, and decree as corrected pursuant to Rule 60 (a) of Federal rules of civil procedure

Filed Jan. 7, 1946

This cause having come on for hearing on plaintiff's motion for a preliminary injunction; affidavits having been filed in opposition to the motion for preliminary injunction; briefs having been submitted; and counsel for the parties having been heard on November 15 and December 20, 1945; it is hereby ordered, adjudged, and decreed that:

1. The application of plaintiffs for a preliminary injunction be, and it is hereby denied.

2. On the Court's own motion, the complaint be and is hereby dismissed with prejudice.

H. A. SCHWEINHAUT,
Justice.

Dated: December 21, 1945.
Corrected order approved:

JOHN F. SONNETT,
Atty. for Defendants.

Note of The Robert Dollar Co in favor of Dollar Steamship Lines, Ltd (Hong Kong)—Cancelled		$1,515,973.24
227,790 shares class B and 2,075 shares class A stock of Dollar Steamship Lines Inc., Ltd	$1,415,972.24	
Office equipment, furniture, furnishings and fixtures and automobiles received	100,000.00	
Cancellation of management agreement between Dollar Steamship Line (Cal.) and The Robert Dollar Co	1.00	
Note cancelled		1,515,973.24
Stocks and other consideration received	$1,515,973.24	

767 In the District Court of the United States for the District of Columbia

Civil Action No. 31468

R. STANLEY DOLLAR, ET AL., PLAINTIFFS

v.

EMORY S. LAND, ETC., ET AL., DEFENDANTS

Order granting injunction pending appeal

Filed Dec. 26, 1945

This cause having come on for further hearing on motion of plaintiffs for an injunction pending appeal; and counsel for the parties having been heard on December 21, 1945; and it appearing to the Court that the relief herein granted is necessary to preserve the status quo pending an appeal by plaintiffs to the United States Court of Appeals for the District of Columbia; it is

Ordered that until the decision of the appeal in this case by said Court of Appeals, the defendants, their officers, agents, employees and all persons acting in concert or participation with them, are hereby restrained from selling or disposing of the corporate stock issued in the name of the American President Lines, Ltd. and now in the possession of the defendants; provided, however, that plaintiffs shall first have given security in the sum of five thousand dollars ($5,000.00) in the form and manner required by law and approved by this Court; and provided, further, that plaintiffs shall first have filed with the Clerk a notice of appeal from the order, judgment, and decree of this Court entered on December 21, 1945; and provided, further, that plaintiffs shall promptly and without delay take all steps necessary to perfect said appeal and to advance the hearing of said appeal before said Court of Appeals.

H. A. SCHWEINHAUT,
Justice.

Dated: December 26, 1945.

768 In the District Court of the United States for the District of Columbia

Civil No. 31468

R. STANLEY DOLLAR, ET AL., PLAINTIFF

vs.

EMORY S. LAND, ET AL., DEFENDANT

Notice of appeal

Filed Dec. 26, 1945

Notice is hereby given this 21 day of December 1945, that the plaintiffs in this cause, R. Stanley Dollar, et al., hereby appeal to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 20 day of December 1945, in favor of the defendants against said plaintiffs.

CLINTON M. HESTER,
Attorney for Plaintiffs.

Memorandum

December 26, 1945

Bond ($5,000.00) on appeal of Plaintiff approved and filed.

769 In the District Court of the United States for the District of Columbia

Civil Action File No. 31468

R. STANLEY DOLLAR, ET AL., PLAINTIFFS

vs.

EMORY S. LAND, ET AL., DEFENDANTS

Statement of points upon which appellants intend to rely on appeal

Filed Jan. 7, 1946

1. The Court erred in dismissing the Plaintiffs' complaint.

Clinton M. Hester,
CLINTON M. HESTER,
432 Shoreham Building, Washington, D. C.
Attorney for Appellants.

Dated: January 7, 1946.

770 In the District Court of the United States for the District of Columbia

Civil Action No. 31468

DOLLAR ET AL.

v.

LAND ET AL.

Transcript of proceedings

Filed Jan. 12, 1946

771 WASHINGTON, D. C.,
Thursday, November 15, 1945.

HEARING ON MOTION FOR PRELIMINARY INJUNCTION

The matter came on for oral argument at 11 o'clock a. m. before Honorable HENRY A. SCHWEINHAUT, Associate Justice.

Appearances: for plaintiffs—Messrs. Clinton M. Hester, William E. Koken. For defendants—Messrs. John F. Sonnett, Assistant Attorney General; Paul Page, Solicitor, United States Maritime Commission.

772 PROCEEDINGS

The CLERK. Dollar, et al. versus Land, et al.

The COURT. Mr. Assistant Attorney General, have you filed any memorandum with me?

Mr. SONNETT. I haven't yet, your Honor, for the reason that we have not yet had sufficient time to do so. I hope to have it here within the next half hour or so. I have just served upon counsel, if the Court please, an opposing affidavit by Admiral Land, Chairman of the Maritime Commission; an opposing affidavit by A. J. Williams, Secretary of the Maritime Commission; and a further affidavit by Admiral Land dealing with the inadequacy of the amount of security posted by these plaintiffs as a condition to the temporary stay. I don't think we need get into that question just yet, however.

The COURT. When Mr. Hester presented the request for temporary restraining order, he and I both had practically no way of arriving at what the amount ought to be, and I just fixed it at the arbitrary amount of $1,000. I will hear you on that at any time you wish, if I should issue a preliminary injunction. I didn't know how else to arrive at that.

Mr. SONNETT. If the Court please, this third affidavit with respect to that question is submitted only in the event—which I think absolutely unlikely—that a temporary restraining order will issue.

The COURT. Very well. Mr. Hester.

773 Mr. HESTER. If the Court please, the Assistant Attorney General just served us with these documents. I don't want to be technical, but it may be necessary for me to express some surprise and hear what he has to say. I do believe—and, of course, my interpretation of the rule may be wrong—but I do believe, under Rule 9B of the District Rules, these should have been served on us a little sooner.

Mr. SONNETT. I have no objection to filing any affidavit counsel designates as appropriate, if the Court please.

The COURT. Let us proceed, and I will hear the matter.

Mr. HESTER. This case is before the Court for a preliminary injunction to restrain the members of the Maritime Commission from selling certain stock which the plaintiffs claim they own. In August, 1938, pursuant to an agreement entered into between the plaintiffs and the Maritime Commission, certain stock of the Dollar Steamship Line—which is now known as the American President Lines—was transferred to the Maritime Commission. The Maritime Commission claims that it is the owner of this stock; that the United States is the owner of the stock. The plaintiffs claim that the stock was given as collateral. The plaintiffs contend that the stock was given as collateral. The plaintiffs contend that the Maritime Commission not only had no authority to take title to this stock, but that the Maritime Commission was actually prohibited by law from taking title to the stock.

774 As I understand it, in this proceeding the Court is not hearing this case on the merits today; but that it is only necessary for the plaintiffs to show probable cause, and that irreparable damages will result to the plaintiffs if a preliminary injunction is not granted.

The Maritime Commission acted, that is, entered into this agreement, pursuant to which the Maritime Commission claims it took title to this stock. They based their action on an opinion of the general counsel of the Maritime Commission. The general counsel conceded in his opinion that there was no express authority to do this. He said he found implied authority in Section 207 of the Maritime Act. He said that in the body of his opinion; and then, in the conclusion of his opinion, he said he found implied authority, looking at the act as a whole.

The Comptroller General of the United States, in a report to Congress in 1940, reported to Congress that in his opinion the

Maritime Commission had no authority to take title to this stock. To use his own words, he said:

"It is of doubtful legality, to say the least."

In determining whether or not the Maritime Commission had authority to take title to this stock, we go back to a statute passed in 1820. It is the old statute which Congress follows today and which all the government agencies are required to follow, and that says that no government agency is authorized to enter into a contract unless the contract is authorized by law or by an appropriation act.

775 For a number of years the Attorneys General construed that act as requiring express authority before any contract could be entered into. About 1875 or 1880, an Attorney General modified that interpretation somewhat by saying that either express authority must be found in the statute, or it must be necessarily or naturally inferred from a duty imposed or an authority granted—necessarily or naturally inferrable from a duty imposed or an authority granted.

Just to stop for a moment on that to give an examination of an instance where you would not have express authority, but authority that is necessarily or naturally inferred, a duty imposed or authority granted, we take the case where the Maritime Commission is authorized to operate ships. It is necessarily or naturally inferred that those ships will have to be repaired, or that oil will have to be purchased for them, or equipment. Our position, as we proceed in the argument, is that that is the type of authority the Attorneys General were talking about.

To show what the courts have thought about this 1820 statute, the Supreme Court, in the case of Chase versus United States, 15 Supreme Court at page 174, had under consideration a suit to recover monies under a lease which the Postmaster General had made for a post office. The Postmaster General had been authorized to establish post offices, but the Supreme Court said

776 that the authority wasn't there. In other words, it was not necessarily or naturally inferred, from the duty imposed or the authority granted to establish post offices, to go out and lease a post office. All the Postmaster General could do would be to designate the place where the post office was going to be, and he would have to go to Congress for further authority.

And I want to say this, that this 1820 statute is the reason why Congress has spelled out in the Maritime Commission Act the authorities of the Maritime Commission—and they are very voluminous. For example, the Maritime Commission is authorized to purchase vessels, to construct vessels, to operate vessels; it is authorized, among other things, to extend or renew mortgages taken over from the old Shipping Board; to construct or repair

vessels for other government agencies, to construct cargo vessels, to enter into subsidy contracts." The 1820 statute required, unless Congress changed that old statute, that they spell these things out from the statute.

Section 207 of the Maritime Commission Act, which the general counsel of the Maritime Commission in his opinion of 1938 relied upon, conferring upon the Maritime Commission implied authority, reads as follows:

"The Commission may enter into such contracts, upon behalf of the United States. * * *"——

The COURT. Pardon me; what are you reading from?

777 Mr. HESTER. I am just quoting Section 207.

The COURT. Of what?

Mr. HESTER. Of the Merchant Marine Act—excuse me.

The COURT. Yes.

Mr. HESTER. "The Commission may enter into such contracts, upon behalf of the United States, and may make such disbursements as may, in its discretion, be necessary to carry on the activities authorized by this chapter or to protect, preserve, or improve the collateral held by the Commission to secure indebtedness, in the same manner that a private corporation may contract within the scope of the authority conferred by its charter."

What we have in mind is to show there was no authority, under this section of law, which the Maritime Commission said gave them implied authority, to take title to the stock. The committee report on that—and this is on the amendment; this is the latest construction by a congressional committee on this section—says:

"This amends Section 207 of the Merchant Marine Act of 1936. Section 207 of the Act provides 'that the Commission may enter into such contracts, upon behalf of the United States, as may, in its discretion, be necessary to carry on the activities authorized by this Act, in the same manner that a private corporation may contract within the scope of the authority conferred by its charter.'

778 "The amendment adds that it 'may make such disbursements' as may in its discretion be necessary 'to protect, preserve, or improve the collateral held by the Commission to secure indebtedness' in the same manner as a private corporation.

"The amendment is designed to make clear a power which it is thought already exists in the Commission, but about which some doubt has been expressed. Under the Act, the Maritime Commission has all the general and implied powers of a business corporation. The specific reference to the power of protecting and preserving the collateral, mortgages, and so forth, held by the Commission is intended to make certain that the Commission possesses power to advance or expend funds for the preservation

of its collateral, where found necessary or advisable. Such power has often been exercised by other government lending agencies, such as the Reconstruction Finance Corporation. Without such authority, the Commission may find it impossible to protect its mortgage or other interest in vessels, the title to which is in a transitory state, or, where vessels are operated by companies which are financially embarrassed, when such vessels, because of accident or otherwise, need to be repaired or salvaged before further operation."

The position of the plaintiffs is that this stock was taken as additional collateral for an indebtedness, on notes and mortgages, which the Maritime Commission held. And, as I said be-
779 fore, if it should be held that the contract actually conveyed title to the United States, then the position of the plaintiffs is that the contract was illegal because it is prohibited by the statute.

The COURT. You are talking about what contract—a contract between the Maritime Commission and the plaintiffs?

Mr. HESTER. A contract between the Maritime Commission and the plaintiffs, pursuant to which this stock was transferred.

The COURT. Let me interrupt you, if I may, to ask this: You take the position that the Commission had no legal authority to take title to the stock. Do you urge, also, that they had no authority to take it as collateral?

Mr. HESTER. Oh, no.

The COURT. If they had the right to take it as collateral, and there is a default in the indebtedness, then they would have the right to sell it, would they not?

Mr. HESTER. That is right; but I omitted to say this, that this indebtedness—and I should perhaps give you a few more facts about this case.

The COURT. I think you should, because otherwise I may get off the track, since I don't know the facts.

Mr. HESTER. The factual situation it this: that the Dollar Steamship Company operated this round-the-world service. It was started about 1924. It was the first American service of
780 its kind which successfully competed against foreign, subsidized steamship lines. After they had been in operation some years, they got into labor difficulties, and then the Post Office held up the steamship pay; and finally Congress changed the method. They got contracts, you see, giving them pay for carrying the mail. Finally, Congress changed that method in 1937, I think June 1, so that thereafter there wasn't any mail pay, but they—the American steamship lines—were to be given what was known as an operating differential subsidy. That was a subsidy which would be the difference between the cost of

operating an American line, and repairing ships in American ports, and so forth and so on, the difference between that and the cost of operating a foreign line.

After this subsidy act was passed, on June 1, 1937, the Dollar Steamship Company operated until January 1938, without any pay whatsoever. Then in January 1938, they gave them a temporary subsidy—operating differential subsidy. The Maritime Commission gave it to the steamship company. It was not sufficient, and notwithstanding the request of the Dollar Steamship Company for a better subsidy, they did not give them any additional subsidy. That agreement was then extended; I think it went to April, and it was then extended to July. And then in August 1938, this agreement was entered into.

The situation had gotten to the point where the Dollar Steamship Company had to go into reorganization proceedings, if the government didn't grant them a further operating dif-
781 ferential subsidy and give them the operating differential subsidy they thought they were entitled to—and they had this great organization throughout the world, which had been the pride of the American merchant marine and which had operated for so many years without a subsidy. So that finally the Maritime Commission insisted upon this stock being transferred to it; and, as I say, the position of the plaintiffs is that it was transferred as collateral.

The COURT. Collateral for what?

Mr. HESTER. Additional collateral.

The COURT. For what? To secure what?

Mr. HESTER. To secure an indebtedness of $7,500,000 in mortgages and notes which the Maritime Commission held against the company.

Now, this stock was taken by the Maritime Commission, and after they took this stock——

The COURT. Under a written contract?

Mr. HESTER. That is right—under a written contract. After they took this stock, they displaced one director. You see, this stock was the controlling stock in the corporation, 93 per cent of the voting power. After they took this stock, they displaced one director. Mr. R. Stanley Dollar, president of the company, was displaced by ex-Secretary McAdoo. After that happened, the Maritime Commission loaned to this company $2,000,000 to
782 enable it to make repairs. Also, you see, they changed the name of this company to the American President Lines, and they then controlled and had possession of this stock. They changed the name of this company to the American President Lines, and loaned the company—something they wouldn't do for

the Dollar Steamship Company, these people who had been in business, in the business the old Robert Dollar, a famous character, started in 1898, when that pioneer and dean of American shipping started this company—but they loaned $2,000,000 to repair those ships to this American President Lines, now having control of it. They went to the RFC and got the RFC to lend $2,500,000 as additional operating capital.

The COURT. In addition to the $2,000,000?

Mr. HESTER. That is right. The $2,000,000 was for repairs to ships, but the $2,500,000 was additional operating capital. And then they granted this company a five-year operating differential subsidy, which resulted during the war in enabling this company to pay off all its indebtedness.

The COURT. What did they get for the $2,000,000 and the $2,500,000?

Mr. HESTER. They just got the notes of the company.

The COURT. That was no stock transaction?

Mr. HESTER. No; they do this after they get the stock.

The COURT. All right.

Mr. HESTER. They see to it this company gets $2,500,000 additional operating capital, $2,000,000 for repair of ships,
783 and additional operating expenses. Then what happens?

During the war this company, the American President Lines, is able to pay off not only the $4,500,000, but pay off the $7,500,000 that the Dollar Steamship Line owed to the Maritime Commission. And what is the result of it? The Maritime Commission today is holding this stock, worth $9,000,000, which they didn't pay anything for—and if there was ever a case of injust enrichment, this is it. Here the Maritime Commission is sitting down there now waiting to sell this stock to the public, which they never gave a penny for. They didn't take that stock to reduce the principal indebtedness of the Dollar Steamship Company one penny, and the contract expressly says so. They didn't take it to pay one penny of interest. And that is the factual situation.

The COURT. Are you now going into a new phase of the argument?

Mr. HESTER. We have here a few other sections on the authority I was going to discuss; but it would take a little time.

The COURT. Then we will recess for ten minutes.

(Upon expiration of the recess, the hearing of argument was resumed as follows:)

The COURT. Mr. Hester, it might help me a bit if I ask you a question or two before you go into the other phase of your
argument, so that I can get your position a little more
784 clearly than I have it now. This approximately $7,000,000 worth of stock secured a total indebtedness of how much?

Mr. HESTER. Here was the situation: The Dollar Steamship Company owed the Government $7,500,000, and the Government had mortgages on the steamships of the Dollar Steamship Company and had notes of the Dollar Steamship Company.

The COURT. Yes.

Mr. HESTER. This additional stock, we say, was merely additional collateral to secure this debt.

The COURT. I see. Now, as of this time, has any of the indebtedness been paid?

Mr. HESTER. Absolutely all of it, out of the profits of operations of this steamship company—and not one penny of United States money was used to pay those obligations.

The COURT. So that your position is that you are now entitled to the return of the stock?

Mr. HESTER. We are now entitled to the return of the stock.

The COURT. All right.

Mr. HESTER. As I say, the general counsel of the Maritime Commission in his opinion to the Maritime Commission in 1938, pursuant to which the Maritime Commission entered into this agreement, under which it took possession of this stock, contended that the Maritime Commission had implied authority under this
785 Section 207 which authorized the Maritime Commission to contract to carry on the activities authorized in the Act, and one of those activities was to protect, preserve, or improve collateral.

If this stock was taken as collateral, then it did improve the collateral already held. However, if it were taken, if title was taken to it, then it didn't improve the collateral in the slightest. As a matter of fact, the Maritime Commission assumed the then current liabilities of the corporation organized under the laws of the State of Delaware.

The Comptroller General construed this Section 207, in a case in which the general counsel of the Maritime Commission advised the Maritime Commission assumed the then current liabilities of the corporation organized under the laws of the State of Delaware.

The Comptroller General construed this Section 207, in a case in which the general counsel of the Maritime Commission advised the Maritime Commission that the Maritime Commission was authorized to purchase vessels, constructed in the United States, to be used as substitutes for vessels which needed replacement in our foreign merchant marine, that is, our merchant marine operating in foreign service. Otherwise, the coastwise service was excluded from it. The Navy Department wanted three vessels, and, because of their appropriation acts or statutes, they couldn't get these three vessels, I think oil tankers. So they went to the

Maritime Commission, and the general counsel of the Maritime Commission advised the Maritime Commission that the Maritime Commission, under Section 207—this general authority to contract to carry on the activities of the Commission—could purchase these vessels for the Navy. The Comptroller General said it could not be done; that there was no authority in that Section 207 for that purpose. Yet that is the section the general counsel of the Maritime Commission relied upon; and here is what the Comptroller General said, that Congress found it necessary, in Section 215 of the Merchant Marine Act, specifically to authorize the Maritime Commission to purchase vessels under certain conditions, that is, just for replacements in this foreign service, and that there was no authority whatsoever in Section 207.

786

The position we take here briefly this morning is that if there is no authority under Section 207 to purchase vessels, there is no authority to purchase the steamship line or to purchase the corporation which owns the vessels.

We also take this position, that Congress, having enumerated expressly in Section 215 that the Maritime Commission could purchase vessels for certain purposes only, under the *expressio unius* rule, it excluded purchase of vessels for any other purpose; and that what this amounted to, the taking of this stock, was not only the purchase of vessels but actually the purchase of an entire corporation, because they had the voting power. The voting power they took was 93 percent, and the total stock they took was something over 70 percent.

We now come to Section 905 and we say that in addition to Section 215, which prohibited this and made this contract illegal, that Section 905, in addition, made it illegal, and it made it illegal in this way.

787

The COURT. Wait a minute. What contract?

Mr. HESTER. The contract pursuant to which the stock was transferred to the Maritime Commission.

The COURT. You mean it made it illegal?

Mr. HESTER. To enter into that contract, if they took the stock.

The COURT. But not if it were collateral?

Mr. HESTER. Oh, no; if it were collateral, it was all right.

The COURT. So fundamentally, on the merits, this question will turn on the construction of that contract, will it not?

Mr. HESTER. Well, if your Honor should find that this contract conveyed title to the stock, then the question would arise as to whether the Maritime Commission was prohibited by law from entering into that contract—and that is our position; that it was prohibited by law from entering into that contract; that it was prohibited by the Section 215 which I have just discussed; and

now I am coming to Section 905, which I say absolutely prohibited it from entering into the contract.

Section 905 of the Merchant Marine Act, so far as it is material here, provides that—

"No corporation, partnership, or association shall be deemed a citizen of the United States unless the controlling interest therein is owned by citizens of the United States."

788 What did the Maritime Commission do, and what did this American President Line, formerly the Dollar Steamship Company, what did that corporation do in the light of this? That corporation transferred to the Maritime Commission, according to the contention of the Maritime Commission, title to that stock. What happened? Our position is that the Maritime Commission is not a citizen of the United States within the meaning of the statute. Therefore, this corporation, under this Section 905, in order to qualify for the benefits under the Act, that is, for operating differential subsidies and other benefits under the Act, could not transfer the majority of its stock to anyone other than a citizen of the United States, and yet, it did just that—it transferred it to the Maritime Commission.

We say if they transferred title, then that corporation immediately was disqualified to receive any benefits under this statute, because the United States is not a citizen within the meaning of this statute. The rule is that the United States is not included in a statute unless expressly named therein, except where it has a legal right and to deny it that right would be to deny its citizens a benefit, as in one case where the Maritime Commission foreclosed a mortgage and the priority creditors intervened and said they should come ahead of the United States because the United States is not named; and the court held there that the Maritime Commission had legal authority to enter into that mort-

789 gage, and therefore to deny it the right would not be proper, because they had the legal authority to enter into it.

The position we take here is there was no legal authority whatsoever to enter into this contract; and, therefore, that exception to the general rule of law is not applicable in this case.

In a recent case in the Supreme Court of the United States, the Supreme Court has given some idea as to how far it will go in not treating the United States as coming within the statute. That case involved a civil suit for treble damages under the antitrust laws, and the government took the position the United States was a person within the meaning of the statute. The Supreme Court there said:

"No, you cannot strain words to bring the United States within the intent of a statute."

In this case, if it should be held that the United States is a citizen within the meaning of this statute, then a constitutional question is raised, which we are not pressing at the moment; but I would like to cover that briefly, and it is this:

If the United States was a citizen within the meaning of this statute, what has Congress authorized the Maritime Commission to do? It has authorized the Maritime Commission to delegate its sovereign powers to a state corporation, which is exactly what it has done in this case, because this is a
790 Delaware corporation; its officers and directors are subject to the control and the regulation of the state laws of Delaware. And what does that mean? It means subject to taxes. It means they lose their immunity to suit, which is enjoyed by the United States, and other benefits; and they are subjected to all of these liabilities.

In an opinion rendered by the Attorney General, reported in 33 Opinions of the Attorney General, 570, he was considering whether or not the Shipping Board could transfer vessels to a state corporation and take, in return, stock; and he held that the shipping laws did not authorize that to be done; that it must be very clear, from the act itself, that that authority was there. He didn't consider the constitutional question; but that is pertinent to this discussion here.

Our position is that if the United States should be regarded as a citizen within this statute, and therefore they had the right to go out and take the controlling stock, to buy the controlling stock, and to take title to the controlling stock in a state corporation, they are delegating sovereign functions to the officers and directors of that corporation, and they are not subject to prosecution in the courts of the United States for misfeasance and malfeasance under the old case of United States versus Strang, which went to the Supreme Court, and they are also subjected to all these liabilities.

We have numerous other objections, but we don't care to
791 raise them at this time. I would just like to discuss for one moment the irreparable damages which will result to the plaintiffs in this case if a preliminary injunction is not issued.

The COURT. And you might also give me, at the same time, your views on what the Maritime Commission will suffer if I grant it.

Mr. HESTER. There are any number of bidders all over the country for this stock. They are grouped and the groups are spread out all over the country. I would be glad to have my friends here correct me on that if I am wrong. If this stock is sold, we would have to file suits against these purchasers all over the country. There would be a multiplicity of suits in a multiplicity of jurisdictions and in the various courts, and it might be years, if ever, before we ever got our remedy.

The COURT. What remedy would you have?

Mr. HESTER. To be frank with you, I don't know; I just don't know. It would be such a colossal task to bring these suits all over the country, that for the moment it is a little beyond me. We would have to file suits all over the United States.

On the other hand, the situation is this: Why is the Maritime Commission complaining about the delay? In the first instance, let me say again, here they have something they never paid a
792 penny for. And what has happened? All the indebtedness has been paid. And what have they? Stock worth $9,000,000 we contend is owned by the plaintiffs in this case.

What happened? This agreement was entered into in 1938. These debts were paid back by this corporation—not by the Maritime Commission or by the United States, not one penny of the money of the United States. These debts were all paid back.

The COURT. By whom?

Mr. HESTER. By the company itself.

The COURT. Which company?

Mr. HESTER. The same management. The Dollar Steamship Line, when the stock was transferred, the Maritime Commission changed the name of it to the American President Lines. But that same company, out of its operating profits, paid every penny of it back.

What is the damage to the Maritime Commission? I may be wrong about my facts, and if so I would be glad to have my friends correct me on it. They have advertised this stock for sale. We did not have any right to have this returned until the debts were paid, and according to our information the debts were paid in 1943 and 1944; but we were then in the midst of a great war, and it would have been very unpatriotic for us to have instituted any suit at that time; so we didn't institute a suit until we were forced to do it. We were forced to do it while the
793 Japanese war was still on, because they advertised the stock for sale about June or July 1 of this year. We made demand for its return and they refused to return it. We tried to work it out with them administratively and we couldn't do it. So we are compelled to come here and throw ourselves upon the mercy of the Court. We would have been here before, had it not been for the fact that the war was on.

I don't see what possible damage can accrue to the Maritime Commission. It merely means, if your Honor would find against the defendants in this business, they would have to readvertise for bids. The reason I say this is that the war is over now, and we are going to start expanding our merchant marine. The administration has committed itself to a policy of expanding our merchant marine. We are going to put our flag on the seven seas again.

In 1908 when President Roosevelt sent the fleet around the world, they saw only one other American flag in Japan. The Dollar Line put the American merchant flag upon our ships. They did it, of course, with the help of our government; but they did it first without the help of our government.

What is happening? This stock is appreciating in value all the time. What can they possibly lose? With that, I rest on the case and ask for a preliminary injunction. If your Honor takes this matter under advisement, we ask that the restraining order
794 be continued until your Honor can decide the question. Thank you.

Mr. SONNETT. If the Court please, I would like to file the affidavits which I previously served on counsel for the plaintiffs. And I should like further to request leave of the Court to file the government's brief this afternoon. It is now being typed and will be here sometime this afternoon.

The COURT. Very well.

Mr. SONNETT. If you Honor please, this is a shocking attempt made in this complaint to upset an agreement made in August of 1938—seven years ago—a formal, written agreement, made after extensive negotiation between these plaintiffs and the government, during which plaintiffs were represented ably by able counsel and were fully legally advised, which agreement provided for the passage of legal title to these certificates of stock, in exchange for very valuable consideration moving to these plaintiffs.

The COURT. What was it?

Mr. SONNETT. That consideration was the release of indebtedness owed by these plaintiffs to the Government of the United States by way of guarantee of money owed by the Dollar corporation, in substantial amount.

The agreement purported by its terms to convey title to the stock. It did so. Now, seven years later, the stock, then having been worth substantially nothing, the common stock here in-
795 volved, seven years later it being worth eight or nine million dollars, these plaintiffs decide that they, and not the American public, should get the nine million dollars. That is basically the question the Court is confronted with.

We have, first, a few observations as to the facts that I should like to present, because I am not entirely clear that the Court has them in mind. First, in the latter part of 1937, the Dollar, which I will call Dollar of Delaware, the corporation the stock of which is here involved, was indebted to the United States in a sum in excess of seven and a half million dollars. That sum represented ship construction, ship sale, and reconditioning loans made to that company by the United States. Those loans were evidenced by promissory notes secured by ship mortgages, and construction or

reconditioning mortgages. Plaintiffs were jointly indebted with Dollar of Delaware in those obligations. In addition to holding preferred stock in Dollar of Delaware, the plaintiffs held substantial blocks of common stock, in classes A and B.

The COURT. This is common?

Mr. SONNETT. That is common, and it is the stock here involved. Dollar of Delaware at that time, that is, in late 1937, was in very serious financial difficulties. By statute, by congressional enactment, the mail contracts were to be terminated. Dollar's financial condition was extremely serious. Under the Merchant Marine
Act, the Maritime Commission was required to consider
796 various factors which would enter into its determination whether or not to grant to a particular company an operating subsidy, in order that it might compete with foreign shipowners.

The Dollar of Delaware Company, in the latter part of 1937, applied to the Maritime Commission for an operating subsidy. That application was, of course, pursuant to the Act, and that Act gave discretion to the Maritime Commission to grant or to withhold operating subsidies, dependent upon various conditions which it might examine into. The Commission was obliged to consider, among other things, the financial resources and the stability of the company, the character and efficiency of its management, as affecting its ability to maintain adequate service in the future, if granted the operating subsidy.

In that connection, the judgment of the Commission, which was a fact set forth before your Honor in the affidavit of Admiral Land, was that the financial position of the company and its management were not such as to justify approval of the application for an operating differential subsidy.

Thereafter, in an effort to solve the problem of Dollar of Delaware and secure the continuance of its service, which the Maritime Commission rightly regarded as essential, negotiations were had looking toward a program for rehabilitating the company so as to
get its finances and management in shape to operate effec-
797 tively these ships in the interests of the United States.

The early negotiations, again as set forth in the affidavit of Admiral Land, contemplated that there be additional guarantees given by these stockholders, these plaintiffs, to secure any additional advances. That plan was declined by these plaintiffs.

Thereafter an agreement was entered into, which is set forth as an exhibit, I think, both to the company and to Admiral Land's affidavits, and also contained in one of these blue books marked Exhibit A. Under that agreement the stockholders undertook,

in exchange for a release to them by the United States of their obligations, as joint obligors on this indebtedness to the United States, to give up this common stock and transfer it absolutely to the United States.

There is not a single word in the agreement which refers to a pledge of that stock so transferred to the United States. Indeed, the prime negotiations make it very clear that no such intention was in the minds of the parties, because they considered previously some proposal along those lines, which had not been accepted. Such proposal had been discussed but not accepted.

The resulting written agreement, contained in that exhibit, provided that the plaintiffs would transfer, and they did transfer, their Class A and B stock, in blank, and with transfer tax stamps affixed. They delivered that stock to an escrow agent, for
798 delivery to the Commission upon completion of the other factors of the agreement. Thereafter, the loans referred to were made. The operating differential subsidy applications were approved. The contracts which the releasing of the plaintiffs' obligations contemplated by this agreement were thereafter executed and delivered, and the stock certificates were delivered by the escrow agent to the Commission, with transfer tax stamps affixed, and have been held by the Maritime Commission ever since. That was in October 1938.

About July 6, of 1943, the Commission determined to dispose of this stock, and publicly offered the stock for sale, just as it did here recently again.

The COURT. When did they do that?

Mr. SONNETT. July 6, 1943. At that time no bid was received which the Commission regarded as satisfactory. But, although public notice was given, as it was by the advertisement, not a word was heard from these plaintiffs asserting any title or claim to the stock, although they knew the United States proposed to sell the stock in 1943.

Prior to the execution of this agreement of August, 1938, a press release was issued by the Commission in which the Commission stated to the public it proposed to sell or might sell or dispose of this stock. This was prior to the transaction. Not a word was ever heard in protest to that press release, and no criticism was ever made of that press release.

In 1940, another attorney representing these plaintiffs—
799 and this was before the war—advanced substantially similar claims to the Commission, as these claimants now make. The claims were rejected by the Commission, and no suit was filed and no legal action was taken. That was five years ago.

We think, under the circumstances, if the Court please, there is a very noticeable lack of any equity whatsoever in these plain-

tiffs. We think the written agreement is clear on its face. We think the meaning of that written agreement, if it were in any doubt—which it cannot be, from the terms of the agreement—is apparent upon consideration of extrinsic circumstances some of which I will advert to later. But, in substance, that is our position on the facts and the equity involved.

The COURT. May I interrupt you to ask—and you may not know this, but Mr. Page will—does the Commission periodically report to Congress a list of its assets and liabilities?

Mr. SONNETT. I cannot answer that question.

Mr. PAGE. It makes a report, your Honor. If it then specifically lists all assets and liabilities, including this stock, I cannot say; but I can supply that information this afternoon.

The COURT. It may not be important, but what I want to ask is this, whether or not in such reports you have consistently listed this as an owned asset, or whether it is listed as collateral. In either case, of course, under appropriate circumstances, you would have a right to sell; but you would sell, as an owner of collateral or holder of collateral, in a very different status than as owner of the stock itself.

Mr. SONNETT. I think I may answer the Court's question in this fashion: The Exhibits A-1 and A-2, annexed to Admiral Land's affidavit, consist of a compilation of documents sent to Congress. Those documents, as far as they have to do with the August 1938 agreement, clearly indicate the Commission was considered in possession of the stock. There isn't a word that can be pointed to where these plaintiffs ever sought to characterize this as a collateral transaction—not a word. What has happened, in fact, I believe, is that these plaintiffs have now decided they have evolved a legal theory of impossibility, by which they can now, with the aid of a court of equity, set aside solemn agreements made by them seven years ago and never repudiated by them.

Now, as to the reasons why we think this application for a temporary injunction should be denied, and why we think the complaint should be dismissed—first, this is clearly a suit against the United States. The plaintiffs in this case seek to interfere by this action with the record title—and there is no dispute about this fact, that the title is in the name of the Maritime Commission, as a matter of record title, with the transfer tax stamps affixed when they were transferred, when the certificates of stock were transferred to the Maritime Commission, and with the possession by the United States of that stock.

The law, I respectfully submit, is well settled that a suit to divest the United States of property, which it possesses and to which it asserts title, is clearly a suit against the United States. The United

States has not consented to be sued in such a suit. Accordingly, for that reason alone, the complaint should be dismissed.

The COURT. The Maritime Commission is not sueable?

Mr. SONNETT. Not on this type of case, if the Court please. This is a case where the Maritime Commission asserts a proprietary interest to shares of stock held by it and which it has possession of. There is no statutory authorization for a suit of that type against the Maritime Commission.

In that connection I might, with the Court's permission, refer briefly to the language used in the Lincoln Electric case, in 56 Federal Supplement, where the court said, as to this problem:

"If, for example, the object (of the suit) is to compel specific performance of the contract between the United States and the plaintiff, or to compel an officer to pay money out of the Treasury, or otherwise to hand over property which the United States claims to own, or to prevent the United States from using property
802 which it owns or claims to own, in all these cases, where the United States is the real party in interest, a suit must fail."

There are and will be other authorities on that point submitted to your Honor in the government's brief. However, I think that the application of that general principle to the facts of this case is clear. Only by divesting the United States of title to property, which it claims, and of the possession of that property, can the plaintiffs succeed in this suit. The impact of the decree is one which necessarily affects the United States.

The second reason which we respectfully advance is that the certificates of stock involved in this case were in fact absolutely transferred and that the Maritime Commission had legal authority to acquire them. I might say that there are really two points the government advances.

First, as to the fact, I don't think counsel will dispute with me the fact that everything these parties could have done, that is, these plaintiffs, the corporation, and the government, back in 1938, to transfer title to these stock certificates, was done. There wasn't anything they overlooked—transfer and delivery and possession—an uninterrupted possession by the government for several years. There are no other way that could have been devised to transfer title except the way they followed.

It isn't mentioned in the agreement or in the documents
803 anywhere that the stock was collateral. That, I submit, was an afterthought—an afterthought which occurred to the plaintiffs when the stock had appreciated in value.

The COURT. I suppose you would agree, assuming the suit could be brought at all, that a court can look beyond the form of a docu-

ment—for instance, that a court can take a deed in fee and construe it to be in fact a mortgage.

Mr. SONNETT. I would not dissent from your Honor's statement of the powers of a court of equity in that respect. However, not only is the intention of the parties clear from this written agreement, but every single contemporaneous circumstance supports that contention.

I might say, in passing, there is a very interesting little contrast in this agreement, which I think is helpful. Certain shares of the stock in question had been pledged previously by these plaintiffs with a bank, to secure a loan. In this agreement, very careful provisions were made spelling out what would be done with the stock pledged to this other bank and how the government could get title to that stock. Those provisions, which will be set forth in detail in our brief, in substance provided that upon payment of the indebtedness for which the stock was pledged, the stock could be delivered free and clear to the Maritime Commission, or that upon payment of two dollars per share, or some such figure, the Maritime Commission could acquire title to the stock,
804 free and clear of all liens and incumbrances.

It is inconceivable to me that these plaintiffs, represented as they were by able counsel, and the government, being also represented as it was by able counsel, could have drafted an agreement, using language of title and title only, and not using a word which signifies intention to transfer this stock, all of it, as collateral, if the latter were intended. It is inconceivable to me that that could have happened.

The suit is an afterthought, now that they realize the stock, once worthless, is worth nine million dollars. That is why the suit is brought.

The fact that it was the intention of the parties to transfer title absolutely is clear from the language of the Adjustment Plan Agreement itself. Various provisions of this agreement to which I would like to refer briefly are:

"Dollar of California will transfer, or cause to be transferred, all of said stock to the Commission, or its nominee, free and clear of all liens and incumbrances."

That is in paragraph 1 of the agreement. Paragraph 2 provides that the plaintiffs and certain other parties not here involved will respectively transfer, or cause to be transferred, to the Commission, or its nominee, free and clear of all liens and incumbrances, the respective number of shares" listed in the paragraph.

Paragraph 4 of the contract provides that the plaintiffs
805 shall transfer to the Commission, or its nominee, all rights and interests of the plaintiffs and certain other parties,

whose pledging of the shares of stock I referred to previously, pledged to another bank on a previous loan.

Paragraph 5 (b) referring again to the stock previously pledged to the bank, says:

"For a period of five years from date, the Commission, or its nominee, shall have the right, at any time, to purchase and take over all rights and interests of the pledgee (including the rights and interests of the pledgee in and to all collateral then pledged) upon payment of a sum equal to the balance due on account of the loan for which the A stock is so pledged, and in such event to release said A stock from the pledge, and transfer said A stock to the Commission, or its nominee, free and clear."

Paragraph 23 (d) of the contract provides:

"That the Commission shall have no duty or obligation to make any payments, loans, or advances whatever to Dollar of Delaware or to any creditor of said company or otherwise except only in such amounts and under such terms and conditions as may be expressly provided in said subsidy and loan agreements, nor shall it have any duty or obligation whatever to continue, or to provide for the continuation of, the operations, or any part of the operations, of Dollar of Delaware except as may in said agree-
806 ments be expressly provided, nor shall it have any duty or obligation to continue to hold any of the stock, or any interest in or to any of the stock, of Dollar of Delaware which it may acquire under the terms and provisions hereof or otherwise."

If that doesn't mean title, I respectfully submit it doesn't mean anything, and the language is meaningless, because it gives the Commission the right to sell at any time the stock it so acquires. Obviously, the Commission could not transfer title to the stock at any time, if it were merely pledged as collateral and to be returned to the plaintiffs upon payment of this debt. That paragraph alone, I submit, entirely negatives any claim that there was a collateral transaction involved.

In addition to the clear language of the agreement itself, the attorney at that time for these plaintiffs, Keith R. Ferguson, delivered a written opinion to the Commission, in accordance with the usual closing routine, and in that written opinion he said that the delivery of the certificates of stock to the Maritime Commission—

"* * * will constitute valid and legally enforceable instruments of transfer, and will convey to the Commission and to Dollar of Delaware, respectively, valid title to the shares of stock and the physical property covered by such instruments of transfer, free and clear of any liens or encumbrances whatsoever."

807 The Assignment and Option Agreement, which was an implementing agreement to the August 1938 agreement, ea-

tered into between R. Stanley Dollar and the Anglo California National Bank of San Francisco, on October 26, 1938, provided, in part, with respect to some of the stock here involved, that R. Stanley Dollar—and I quote:

"* * * hereby sell, assign, transfer, and set over unto the Commission, subject to said existing pledge (of the stock to the bank), all their right, title, and interest in and to said class A stock."

There are other provisions, but I think that is clear enough.

The Assignment and Option Agreement, again an implementing agreement to this one of August 1938, entered into between the Estate of J. Harold Dollar and the Anglo California National Bank of San Francisco, contains similar provisions.

After execution of the August 15, 1938, contract, the same lawyer, Keither R. Ferguson, representing the plaintiffs, acting as one of the executors of the Estate of J. Harold Dollar, which estate had had title to a substantial portion of this stock, applied to the Court, the Superior Court of the State of California, setting forth the intention of plaintiffs to convey title to the stock to the Commission and describing the transaction so that he might have the probate court's approval of the transaction. The Superior
808 Court made and issued an order finding that the transfer of the title to the stock, held in the name of the tate, would have the advantages represented, and authorized the transfer to be made. That is a matter of official court record in the Superior Court of California. After the transfer was made, the stock was entirely eliminated as an asset of the estate, and there is nothing in that proceeding in any way to suggest there was a collateral transaction. It is perfectly obvious it was a title transaction.

Counsel referred previously to the fact that the name of Dollar Steamship was to be relinquished to the Maritime Commission. Why, if it was a collateral transaction? It was being transferred because the Maritime Commission was acquiring the stock of this company and wanted the name Dollar to go along with it. That is a provision of this agreement.

I think, if the Court please, it is overwhelmingly clear, by every bit of affirmative evidence that exists, that the parties intended to and attempted to transfer title. I say the parties did transfer title, and that the Commission had legal authority to acquire that title.

Now, as to legal authority of the Commission——

The COURT. Are you now come to the question of whether the Commission had legal authority to acquire title?

Mr. SONNETT. I am, sir.

The COURT. Then, if you don't mind, we will recess until
809 one thirty.

(Whereupon, the Court was in recess at 12:20 until 1:30.)

AFTER RECESS

The COURT. Mr. Sonnett.

Mr. SONNETT. If the Court please, to summarize for a moment, we have presented the government's contention that the agreements entered into between the parties in August 1938, and all of the documents, show clearly an unmistakeable intention on the part of both sides to transfer absolute title and ownership of this stock. We have also adverted to what is an undisputed fact, that the stock, in accordance with that agreement, was formally transferred.

Coming now to the question of the Commission's legal authority to acquire title to the stock—which, I take it, is the only real point counsel has advanced—as I understand his argument, it reduces itself to this: No matter what the parties intended to do or tried to do, they could not have transferred title to the Commission, although they attempted to, because the Commission did not have power to acquire title.

On this question of the Commission's legal authority to acquire title and ownership to the stock certificates, I respectfully submit that it is clear, for two reasons, that the Commission had such power. At the time, that is, in August of 1938, the govern-
810 ment was advancing additional sums to this company, Dollar of Delaware—very substantial sums. Those sums, and all prior advances, were secured by formally executed mortgages on the ships and properties of the company. Those advances were, therefore, covered by collateral. The RFC advance of several million was a first mortgagee lien. The Maritime Commission advance was a second mortgage lien. Counsel would now have us believe that the parties proposed to supplement that formal mortgage agreement, wherein the mortgage liens on the property were created as security for all the advances made by the government, by transferring title to the stock, as some sort of additional collateral.

First, of course, at that time the stock was of substantially no value, because of the financial difficulties this company was then in. The stock since that time, in answer to the Court's question this morning, has been carried uniformly by the Maritime Commission as its stock. It has been carried on its records that way and it has been so reported to Congress. The annual report to Congress as of June 30, 1944, by the Maritime Commission carried this stock as an asset of the Maritime Commission, at the value of

the stock, its stated value, which has the B stock $1 a share and the A stock $5 a share, showing the total value of these assets held by the Maritime Commission at $2,666,000.

Prior to the annual report submitted to Congress on June 30, 1944, the Maritime Commission statements carried this
811 stock as assets of the Martime Commission, but at a nominal $1 value. So that throughout, as far as Congress or reports to Congress may be concerned, the Martime Commission has uniformly and consistently asserted ownership to this stock.

Consideration of the legality of the acquisition of title requires, it seems to me, some slight consideration of the purposes to be served by the acquisition of title to the stock, so far as the Maritime Commission is concerned. Those purposes were twofold.

One, that the stock was *accepted in payment* of obligations, as part of the consideration for the release of obligations owed by these plaintiffs to the United States. The power so to acquire property in discharge of obligations owed the United States is an inherent power, and I will come to that a little more fully later on.

With respect to the statutory power, as well, set forth in the Act, which I would like to discuss, I submit there was clear statutory authority. The amendment counsel discussed has nothing to do with the subject we are dealing with. If it did, it would be only favorable to our position and adverse to the plaintiffs' contentions. But the statement made by counsel concerning a change or changes in management, or the fact that there was a continuance of the same management, may be misleading to the Court. One of the purposes served, and indeed a paramount purpose served
812 by the acquisition of title to the stock by the Martime Commission, was so that the previous management could be eliminated, because it was the view of the Martime Commission that the previous management had not been adequate to run this company effectively. That was one of the things the Commission was called upon to determine.

Prior to the specific transaction of August, 1938, there had been changes on the board of directors as a result of the negotiations between the Martime Commission and the company. After this agreement, the only remaining director—if I may use the term—of the old management, was R. Stanley Dollar, who resigned. There was a real purpose, in other words, in eliminating the prior management, in the view of the Maritime Commission; and to insure the elimination of management not regarded as satisfactory by the Maritime Commission, the common stock which had the voting rights and control of the company, was acquired. That purpose was wholly foreign to any purpose of acquiring the stock as collateral.

It so happens that since that time the stock has appreciated in value greatly. That, however, does not affect the purpose for which it was acquired—and the benefit of it clearly should go to the owner of the stock and not to these plaintiffs.

The stock acquisition, then, wasn't an ordinary case of the Maritime Commission going out just to buy a block of stock in a company. Indeed, if the Maritime Commission
813 does that, I find no specific prohibition in any statute for the Commission's so acting. But apart from that, it is the fact that the acquisition of this stock, as far as the ownership of this stock is concerned, was incident to an over-all, comprehensive plan for the rehabilitation of this company, by which there was a substantial consideration moving to these plaintiffs, by way of releases, primarily, of obligations they owed to the United States.

The law, I respectfully submit, is clear that in the absence of any express, particularized provision, the Maritime Commission nevertheless had general power so to act.

In the old case of Neilson against Lagow (12 Howard 98), a statute provided that no land shall be purchased on account of the United States, except under a law authorizing such purchase. In spite of that prohibition, it was held the government could take title to and it did in fact acquire property which had previously been taken as security for a debt. To deny this power, the power to acquire title in discharge of indebtedness, the court said, "would deprive the government of a means of obtaining payment, often useful and sometimes indispensably necessary."

In an opinion of the Attorney General, in 37 Opinions of the Attorney General, the Attorney General referred specifically to the question of acquiring security, that is, stock and the like, and said:

814 "In numerous decisions of the Supreme Court the principle has been laid down that in the exercise of sovereignty the United States is permitted and authorized to complete its business transactions in the same manner and to the same effect as private citizens; and, where it is advantageous, it may accept securities (that is, stock certificates) for debts, even in the absence of authorizing statutes. Such settlements have been upheld. The federal courts have held that lands as well as monies may be accepted in claims due the United States"—and so on.

I submit, therefore, that wholly apart from specific, statutory authority, the Maritime Commission, as an agency of the United States Government, does have an inherent power to accept property such as shares of stock in settlement of debts owed the United States. These plaintiffs owed debts to the United States, and the agreement clearly indicates the stock was accepted by the United

States in discharge, as part consideration, for the release of the obligations owed by these plaintiffs.

Coming now to the statutory language which counsel has adverted to earlier, namely, Section 207 of the Act, that provides:

"The Commission may enter into such contracts upon behalf of the United States, and may make such disbursements as may, in its discretion, be necessary to carry on the activities
815 authorized by this chapter or to protect, preserve, or improve the collateral held by the Commission to secure indebtedness, in the same manner that a private corporation may contract within the scope of the authority conferred by its charter."

Counsel has adverted at some length to the last portion of that statutory provision. For the moment I should like to concern myself with the first portion, that—

"The Commission may enter into such contracts, upon behalf of the United States, and may make such disbursements as may, in its discretion, be necessary to carry on the activities authorized by this chapter * * *."

The agreement of August, 1938, was such a contract, squarely within the statutory authority of the Commission. The agreement was made in connection with the granting by the Commission of financial assistance to the steamship company the services of which were regarded by the Commission as necessary to the national welfare. The acquisition of stock was only an incidental part of that contract. The activity itself I am certain counsel cannot challenge in any way, namely, the subject-matter with which the Commission and these parties were dealing.

The contract, therefore, containing as it does one provision relating to the acquisition of stock, is a very different contract from one which would be solely where the Commission, without
816 relation to any of its stated purposes, went out and acquired stock ownership in a steamship company simply as an investment or for any other purpose. This was part of a reorganization plan necessary to carry out the duties imposed upon the Commission.

The latter portion of that section, I submit, has nothing to do with the issue before the Court. But if it did—if it did—the language would only be helpful to the government's contentions, because the Commission is authorized, in addition to its broad power to make contracts which in its discretion are necessary to carry out its activities, in addition to that the Commission is authorized, by the amendment which the latter half of this section of the statute represents, "to protect, preserve, to improve the collateral held by the Commission to secure indebtedness."

It serves no purpose to assume, as counsel would have this Court do, that this stock was collateral in connection with an indebtedness. That is assuming the very question which is before the Court. It is not collateral and was not so intended. The evidence I think is overwhelming on that point.

However, I cannot see the logic of a connection that the Commission may take stock as collateral, unless also the Commission may acquire title to stock—because what would the Commission do with the stock in case of default? It would certainly have to convey it to someone. Certainly the taking of stock as col-
817 lateral, without power to convey title to someone else, would be a futile thing. The answer, I submit, to that contention on the part of counsel is, first, that the inherent power of the Commission as an agent of the United States to accept property in the settlement of debts is broad enough to warrant the action taken in respect to this stock in any event. Secondly, under the specific authority with respect to contracts, this was such a contract and was so authorized.

Turning to the further question of the standing of these plaintiffs to now, seven years later, contest in this action the validity of the transaction in question, if we were to assume, as the plaintiffs contend, that the transaction was unauthorized, in fact, these plaintiffs cannot, in any event, now attack it. They were subject to the election, to the requirement to elect, promptly, in the event the transaction was unauthorized. It was entered into seven years ago. It was not until 1940 that the question was ever raised. The counsel at that time for the plaintiffs raised the question with the Commission. He was informed the Commission of course asserted title to the stock and owned it. Nothing was done, and no action was ever taken.

In 1943 a press release was issued concerning the fact that the Commission was going to sell the stock—and no action was ever taken by these plaintiffs. It was only until recently, when
818 the decision was made to sell the stock at this time, that action was finally taken. That period of time has elapsed, if the Court please, seven years, during which these plaintiffs have accepted the benefits of this agreement.

The COURT. In what respects?

Mr. SONNETT. They accepted the release of their obligations to the United States. They were also, if the Court please, holders of preferred stock, and still hold that preferred stock. That was a benefit of this agreement which they have retained.

I would refer the Court to, among others, a recent decision in Gray against Commodity Credit Corporation, where plaintiffs asserted they had been compelled to sell to the Commodity Credit

Corporation by means of regulations of the War Foods Administration; that the prices wre inequitable; and that, after carrying out the transactions, they had, in fact, to rescind them for those reasons. The court there held that, having entered into the contract, having performed it and accepted its benefits, the plaintiffs were precluded from challenging its validity or the legality of the governmental action which underlay it.

The record may not show whether these plaintiffs received dividends on their preferred stock. I am informed that is the fact; but I don't argue it if the record before the Court does not show it. In any event, they retained and received any benefits
819 accruing to the preferred stock; they received the benefits *of being released from obligations they owed* the United States; and they have enjoyed those benefits up to the present time.

The COURT. Have you filed a motion to dismiss this petition?

Mr. SONNETT. I have not, if the Court please, for the reason, first, that there was inadequate time; second, that I believe that a motion for a temporary injunction searches the record, and if the complaint is unsufficient, it should be dismissed by the Court on its own motion. I would suggest to the Court that the Court do so, should the Court agree with the contentions of the government.

The very contention which plaintiffs' counsel advanced this morning, to the effect that this was a collateral transaction, that the debts are all paid, that the government didn't put out any money in this situation, and that the government is now going to realize eight or nine million dollars, has been advanced unsuccessfully before in cases where only that issue was involved. For example, in the Alexander case, in 142 Federal 2d, before the Circuit Court of Appeals, there was a transfer of stock in a corporation, which stock at the time of the transfer had little if any value. The plaintiffs sought later to convert that transfer into a pledged transaction and contended that the property in fact never became the property of the defendant, because while
820 in the defendant's possession the dividends from the stock were adequate to pay off the indebtedness which had been involved in that case, and that consequently the plaintiffs were entitled to recover the stock certificates.

The court held, first, that the stock transfer was an absolute one and not a pledge arrangement; but that, in any event, plaintiffs' acquiescence in defendant's possession for approximately nine years, and defendant's expenditures and assumptions of risk incidental to its possession estopped the plaintiffs from advancing their claims to recover the stock.

That, I think, wholly answers the contention made by counsel this morning. Further, as to the plaintiffs' standing now to

challenge this transaction made seven years ago, I would refer briefly to the well-settled rule that if the transaction were illegal, plaintiffs participated in it and a court of equity will lend them no aid.

There is one final point, if the Court please, which I should like now to suggest, and that is a possible question of the statute of limitations. I say "possible" because I am not entirely clear just how the plaintiffs' complaint can be classed; but, as I read it, it is a cause of action which they purport to state to the right for a return of the stock by way of rescission, or some sort of rescission, and for a mandatory direction to a government agency to turn back property transferred in 1938. Whatever view
821 you take of it, it seems to me their cause of action, if any, accrued in 1938 when the contract was executed, the stock transferred, and their obligations to the government released. Since more than seven years have elapsed, I think the three-year statute of limitations might be applicable——

The COURT. How could the three-year statute of limitations be applicable in a situation such as this? The equitable doctrine of laches would apply, would it not?

Mr. SONNETT. It is there my difficulty comes, if the Court please—whether this is an inartistically stated cause of action for rescission and mandatory return, or whether it is the general, equitable cause of action, I am not entirely clear. But, whether it be the three-year statute of limitations or whether it be laches, I think the answer is the same, in light of the facts in this case, that the cause of action, if any, accrued either at a time long enough ago to come under laches, or prior to three years, where the statute of limitations would apply.

One final word and I will be done, if the Court please. The obligation on these plaintiffs is to make a clear showing of a right to equitable relief. The cases establishing that principle are too many and the principle is too well settled to require any argument. I have cited some in the brief which we propose to submit.
There is here no clear showing of any right to equitable re-
822 lief, for the reasons I have advanced. There is here only an attempt, seven years later, by way of afterthought, to undo what the parties solemnly tried to do and did, in fact, seven years ago, and to cash in, in other words, on some specious legal theory that the parties could not do what they tried to do, and that it was illegal, and that they, these plaintiffs, are now entitled to get the money represented by the stock.

As to the immediate situation, bids have been received for the stock; the stock's present value is in excess of eight million dollars; and, unless restrained by this Court, the defendants will dispose of the stock as soon as possible.

The COURT. You might tell me your view concerning the loss the Maritime Commission would sustain, or the damage to the Maritime Commission, if this preliminary injunction issues. The damage is incident to the delay, as I see it; and what would be the fruits of delay?

Mr. SONNETT. I would refer, in that connection, to the short affidavit submitted by Admiral Land, who sets forth his estimate, first stating that the damages cannot be accurately estimated, but that in his opinion—and he, of course, has been chairman of the Commission throughout all the time the stock was held, and is familiar with the bids—that in his opinion the damage might exceed the sum of two million dollars.

The COURT. How?

Mr. SONNETT. Among the factors which enter into pos-
823 sible damage, if the Court please, are, first, the withdrawal of bids; secondly, the changing or possible changing of policy with respect to the future operations of this company; the possibility of serious loss of assets of the company at this time, arising from whatever maritime hazard any company faces. There is a field of ordinary business risk, in other words. We cannot say that there will be, certainly, a loss in that amount. We say there is a risk, and within the security provisions relating to injunction, we are of the view that all we have to establish is that there may be a risk of damage in that sum, not that there necessarily would be.

However, I would repeat again, if the Court please, that we are concerned far more with the insufficiency of the complaint than with the amount of security.

The COURT. I know.

Mr. HESTER. May it please the Court, I would like to take just a few moments to answer a few points Mr. Sonnett has raised. It is unfortunate Mr. Sonnett constantly refers to seven years. We, the plaintiffs, had no standing whatsoever to demand return of the stock, according to our understanding of the case, until the debts were paid; so that would throw out the laches or statute of limitations. And even if he should be right on the seven years, if the contract is illegal, estoppel and statute of limitations would not be applicable.

Mr. Sonnett made some reference to the fact that this
824 stock was worthless at the time it was transferred. We are prepared to prove, if permitted to go into the merits of this case, that it had a book value of some five million dollars at the time it was transferred.

Mr. Sonnett has made considerable reference to the contract. I would like to read two provisions here which he has not read. In the opening part of the contract, it states that each of the parties

will, "with all reasonable dispatch, do all of the things and take all the steps, acts, and proceedings, and execute and deliver all certificates, documents, instruments, and writings that it may legally do."

Section 14, which Mr. Sonnett didn't read, is a very interesting provision, and it says:

"* * * not shall any credits be allowed or given thereon, either as to principal or interest, by reason of the stock transfers or other consideration that may be received by the Commission under the terms and provisions hereof."

The COURT. Read that again, will you please.

Mr. HESTER. "Nor shall any credits be allowed or given thereon, either as to principal or interest, by reason of the stock transfers or other consideration that may be received by the Commission under the terms and provisions hereof."

The COURT. What does that mean?

Mr. HESTER. Well, that is one of the provisions that we rely upon in urging that the stock was taken as collateral.

825. Mr. Sonnett says some of the plaintiffs in this case were released from indorsements on notes, and that that is the satisfaction of the debt. The authorities that we will submit to you will show that that is not the case. The United States has no inherent power to accept stock in payment of a release of an obligation.

I didn't want to bring this up, but I am forced to do so by some things Mr. Sonnett has said here today; and I would like to say this, first: When he is speaking of the release of the plaintiffs from the notes, our position is, irrespective of how the contract may be construed, the plaintiffs were never legally released, because the contract was illegal. If we are permitted to proceed to a hearing on the merits, we are prepared to prove Mr. Dollar was forced into this contract; that the Dollar interests, the plaintiffs in this case, were forced by the Maritime Commission into this contract. Mr. Sonnett has offered today as an exhibit in this case a report made to Congress by the Maritime Commission in support of this transaction, and when your Honor reads that, he will see for himself the venom and the vindictiveness of the officials of the Maritime Commission in preparing that report and what they said to Congress.

Now, Mr. Sonnett, says that this is a shocking case. I agree with him; this is a shocking case. That is the worst I have

826 ever seen from the standpoint of unjust enrichment. And I don't believe it is so shocking—and he has made reference to this today in his argument—it isn't so shocking when a high-ranking official like the Comptroller General of the United States, who is supposed to advise Congress as to the way the

Government construes its laws and administers its laws, reported in 1940 to Congress that this transaction was illegal, was of doubtful legality, to say the least.

Mr. Sonnett has quoted today from some opinion of an attorney, an opinion I am not familiar with, who he said represented the Dollar interests in 1940. We didn't object to that, and in view of that fact I want to say this—and the Court will have to take my word for this, and I am willing to make an affidavit to this: Before I took this case, I went down to the Maritime Commission and discussed this with the highest legal authority, and I was told by that high legal authority that it was generally understood in the Maritime Commission that at the time this contract was made, the Maritime Commission had no legal authority to make it, but that since that time Congress had ratified it.

Mr. SONNETT. If it please the Court, I object to that statement.

The COURT. I sustain the objection, because I am not interested in that. What I would like to hear from you Mr. Hester, is on the question whether this Court has jurisdiction, which I
827 must say at this moment I doubt very much, because it does seem to me an action which would divest the government of property, and therefore a suit against the United States.

Mr. HESTER. This isn't a suit against the United States, your Honor; it is a suit against the members of the Maritime Commission. If this stock were owned by the United States, it would be a suit against the United States.

The COURT. Of course, it doesn't have to be literally, by name, a suit against the United States to be one in law; and if you are not prepared to discuss that now, it is all right. But in your memorandum I would like that discussed, because at this moment, although I certainly have not made up my mind about it, I have grave doubt of the jurisdiction of this Court, for the reason that it sounds very much like a suit against the United States.

Mr. HESTER. We will submit our points and authorities on that.

The COURT. Do you have any other argument you want to present?

Mr. HESTER. No; that is it.

The COURT. I was going to ask one question I think perhaps has been answered. Assume that I should conclude this is not, in law, a suit against the United States and that, therefore, this Court has jurisdiction. The arguments made here on the
828 motion for preliminary injunction would not necessarily dispose of the case, would they, because if the case goes to trial on its merits there will be factual questions to be explored? (To Mr. Sonnett) Do you agree with that?

Mr. SONNETT. If the Court desires a few minutes' discussion on that, I would be glad to offer it.

The COURT. I would like to have it, because it occurred to me this morning that for all intents and purposes, as a practical matter, you were trying this case here today, and that my action would probably be the end of the matter in this Court, whichever way I ruled, because I didn't see from the arguments this morning much possibility of the intervention of any factual issue. I rather assumed it was a question whether this contract said what it means; and, if it did, what did it say? Was it simply a construction of the contract involved? If that is so, then my action is going to end the lawsuit in this court. If it isn't so, then the question is whether or not it goes to the trial on its merits, providing I should hold I have the jurisdiction.

Mr. SONNETT. I submit, since the application for temporary injunction searches the record, that to sustain or grant a temporary injunction you must find a cause of action is stated.

The COURT. I agree with that.

829 Mr. SONNETT. I would suggest further, evene if your Honor holds this is not a suit against the United States and, therefore, this Court has jurisdiction, that the other points we have made are sufficient to establish the fact that the complaint does not state a cause of action and it therefore should be dismissed.

The COURT. I understand that. But suppose I overrule your view on all points, is there anything, then, to be tried by a trial court here, or would you in your hearing on the merits simply reargue the same propositions you have argued here today?

Mr. SONNETT. I don't think there is any genuine issue of material fact.

The COURT. Do you, Mr. Hester?

Mr. HESTER. We had thought that all we had to show today was a probable right and irreparable damages, for preliminary injunction.

The COURT. I think that is right.

Mr. HESTER. And then after you grant the preliminary injunction, the defendants would be required to answer our complaint.

The COURT. Yes.

Mr. HESTER. Then it might be we would want to offer testimony as to the intention of the parties.

The COURT. Yes. Well, that answers that.

830 Mr. SONNETT. I was about to say, if the Court please, I don't think counsel has yet pointed out any issue of fact which in the present state of the record before the Court has been raised. I don't think any such issue can be raised.

The COURT. Even on an ultimate trial?

Mr. SONNETT. Even on an ultimate trial.

The COURT. I will take the case, then. What have you filed?

Mr. SONNETT. I have filed three affidavits, if the Court please, in opposition to the motion for preliminary injunction. I should like to have leave to file a brief.

The COURT. You haven't filed that brief?

Mr. SONNETT. I have not yet filed a brief.

The COURT. Have you, Mr. Hester?

Mr. HESTER. No, your Honor; we haven't filed a brief.

The COURT. All right. How much time do you think you should have?

Mr. HESTER. Fifteen days, if your Honor please.

Mr. SONNETT. If the Court please, I see no necessity for any such length of time. The brief counsel referred to this morning was written at least a month ago, to my knowledge.

The COURT. What brief?

Mr. SONNETT. The brief to which he has made reference this morning and which is now in front of counsel.

Mr. HESTER. This is a brief, your Honor, we have used for administrative purposes and not for the Court. However,
831 if your Honor see fit to cut that time down.

The COURT. How much time do you want, Mr. Sonnett?

Mr. SONNETT. One day after receiving plaintiffs' brief. In other words, one full day. Two days after receipt of his brief, I can file my brief.

The COURT. Well, it may sound very simple, but it doesn't sound too simple to me, and I want to give you time adequately to present the matter. Can you do that in ten days, Mr. Hester?

Mr. HESTER. Yes, we could.

The COURT (to Mr. Sonnett). Then that isn't going to do you any great harm.

Mr. SONNETT. If the plaintiffs will supply additional security, I agree with your Honor.

The COURT. What additional security, for instance?

Mr. SONNETT. Well, Admiral Land has suggested, if the Court please, a reasonable amount would be two million dollars. That is an informed guess.

The COURT. I think it is a guess—and I haven't read his affidavit. But I wasn't, I must say, too much impressed with the reasons you gave me for increasing it. I can't see at this moment any basis for an amount beyond the cost of submitting new bids. I don't think there is anything before me but that.

Mr. SONNETT. There is the possibility, if the Court
832 please, that new bids when submitted may be substantially less than the bids are now.

The COURT. But that is just guessing all over the lot.

Mr. HESTER. Not only that, but here is the American merchant marine opening up, and this stock will appreciate.

The COURT. I would think so. It is like tossing a coin and calling it heads or tails. I called it heads the other day and it is a thousand dollars.

Well, ten days, Mr. Hester; and you can take such time after that as you wish.

Mr. SONNETT. I will be contented, if he takes ten, to take five, and file our brief within that time.

The COURT. I am not imposing upon you any time limit, because I think you are the one more concerned than I am with the time.

Mr. SONNETT. We will have our brief in, then, your Honor, within five days of receipt of plaintiffs' brief.

(Whereupon, at 2:15 p. m., the hearing of argument of motion for preliminary injunction was concluded.)

REPORTER'S CERTIFICATE

The foregoing record is certified to be a true copy of the official transcript of proceedings taken by the undersigned court reporter for the District Court of the United States for the District of Columbia.

Thomas O'Neal.
THOMAS O'NEAL.

I hereby certify this is a true copy of the original on file in the District Court.

JOHN F. SONNETT,
Asst. Atty. Gen.

833 In the District Court of the United States for the District of Columbia

Civil Action No. 31468

DOLLAR ET AL.

v.

LAND ET AL.

Transcript of proceedings

Filed Jan. 12, 1946

834 WASHINGTON, D. C.,
Thursday, December 20, 194..

FURTHER HEARING ON MOTION FOR PRELIMINARY INJUNCTION

The matter came on at 2:15 o'clock p. m., before Honorable HENRY A. SCHWEINHAUT, Associate Justice.

Appearances: For Plaintiffs—Clinton M. Hester, Esq., and Gregory Harrison, Esq. For Defendants—John F. Sonnett, Esq., Assistant Attorney General; and Paul Page, Esq., Solicitor, United States Maritime Commission.

835 PROCEEDINGS

The CLERK. Dollar versus Land, No. 31468.

The COURT. Proceed, gentlemen.

Mr. JESTER. If Your Honor please, I would like to introduce my associate, Mr. Gregory Harrison, who desires to argue the question of jurisdiction for the plaintiffs.

The COURT. I will be very glad to have Mr. Harrison do so.

Mr. HARRISON. May it please the Court, before presenting to the Court my argument in this matter, I would like to call to the Court's attention a matter which has arisen concerning the propriety of my presenting argument to you in this cause—

For a great many years the firm of which I am a member has represented the Reconstruction Finance Corporation as regional or agency counsel at San Francisco. In 1938 a loan was made by the Reconstruction Finance Corporation to the American President Lines. That loan as a matter of fact, is referred to in the contract which is the subject of discussion in this suit.

The suggested statement of facts does not, to my mind, convince me I should not present my argument. On the contrary, I believe my appearance is proper. But since it involves the propriety of my conduct in a cause pending before this Court, I would appreciate the opportunity to state the facts and ask

836 the Court to decide.

Prior to the transfer of the Dollar stock and during the closing of this transaction at San Francisco, California, the firm of Brobeck, Phleger & Harrison were counsel for the Reconstruction Finance Corporation. In that connection, the representatives of the Reconstruction Finance Corporation—and, in particular, Allard A. Calkins, Manager of the San Francisco Loan Agency, and Theodore R. Meyer, of the firm of Brobeck, Phleger & Harrison, being agency counsel for the Reconstruction Finance Corporation—participated in negotiations and conferences, and Mr. Meyer and Mr. Wright participated in conferences with counsel for the United States Maritime Commission.

Mr. Meyer and Mr. Wright approved agreements between the Maritime Commission and the Reconstruction Finance Corpora-

tion, and agreements between the Maritime Commission, the Reconstruction Finance Corporation, the Dollar Steamship Lines.

The so-called "Master Resolution" of the Reconstruction Finance Corporation, which is annexed to Admiral Land's affidavit here, provides, among other things, as a condition precedent to the making of the Reconstruction Finance Corporation's $2,500,000 loan, that agency manager and agency counsel shall receive evidence satisfactory to them that borrower's financial reorganization has been consummated, or satisfactory arrangements therefor have been made, substantially in accord-
837 ance with the terms and conditions set forth in and referred to in the Commission resolution—and it then proceeds to state what shall be included.

The Commission resolution referred to is the resolution of the Maritime Commission of September 27, 1938, which is in the record here, authorizing the carrying out of the contract of August 15, 1938.

It has never occurred to me that that loan of the Reconstruction Finance Corporation, which was approved as to form, which was made, and which has been fully paid, was involved in this case, even remotely. In this case we appear on behalf of suitors who seek the possession of shares of stock, in an action which is directed against the defendants in their personal capacity, the very foundation of which is predicated upon the contention that the United States is without interest, much less the Reconstruction Finance Corporation. I am unable to see, therefore, any connection between that loan, its approval and payment, and this suit.

The COURT. I can save you further discussion in the matter by saying I see no impropriety whatever in it. You had nothing whatever to do with the contract, the subject-matter of this suit.

Mr. HARRISON. That is correct.

The COURT. Very well; you may proceed.

Mr. HARRISON. May it please the Court, in the complaint
838 on file here there are a number of inaccuracies as to form. It is the desire of the plaintiffs in this case to submit tomorrow to counsel and to the Court a corrected or amended complaint which will cure all of those inaccuracies—which are as to form, not substance. And may I ask, therefore, that that be done and a copy presented to counsel for the Government and the motion to dismiss be considered to stand against the amended complaint?

Mr. SONNETT. I cannot consent to that, if the Court please, without seeing the complaint.

The COURT. I shouldn't suppose you could; but I am satisfied to have it presented with that understanding, and if it is purely a matter of form, I am sure the Government won't object to it.

Mr. HARRISON. This is an action brought by the plaintiffs to recover personal property which the plaintiffs assert title to and claim on, and which they allege is unlawfully withheld by the defendants in their personal capacity. The property in dispute consists of shares of stock in the Dollar Steamship Line, the name of which has been changed to and is known as the American President Lines, Limited. The action is ex delicto and the very foundation is the unlawful refusal of the personal defendants to return the property of the plaintiffs, after demand and refusal.

If this action, in which the defendants question the juris-
839 diction of this Court, asserting the immunity of the sovereign, the defendants have in their memorandum persistently referred to what they allege to be the conceded fact that the subject matter in dispute here is property of the Government or property to which the Government lays claim or property which they are holding possession of for the Government, or property which they assert they claim the right of possession of in behalf of the Government.

Throughout the statements of defendants it is clear that they claim, in effect, to be the Government, for the purpose of this suit.

The position of the plaintiffs is based upon the allegations of their complaint, which for the purpose of this motion must be deemed to be true in all respects. We will confine ourselves to those allegations for the purpose of discussing jurisdiction, for they alone are material to the Court's power to proceed.

In this matter it is the position of plaintiffs that the defendants have no authority from the lawmaking power, the Congress, to hold possession, to receive, to hold or sell, the shares of stock or the certificates representing the same, and that they have no authority from the lawmaking power, the Congress, to assert any claim of that character.

The COURT. May I interrupt you to ask whether you take the position that there is any statute which prohibits it?

840 Mr. HARRISON. No, Your Honor, we do not. We take the position there is no statutory basis for the claim; not that there is a statute prohibiting it.

May I contrast, in that respect, the position in which this Court finds itself and the position taken by the defendants here? This Court, in determining most carefully, in examining into its own jurisdiction, looks to the law which vests power in this Court to proceed. This Court is now diligently ascertaining whether there is warrant of power under the law for this Court to act in a judicial capacity and determine this issue.

The defendants, on the other hand, in substance assert that although they are unable to—and, by the way, in discussing juris-

diction, we are not referring to the concessions, the admissions, and the truths of the allegations of the complaint. These defendants in effect assert: "We need no authority. We need not search for our authority. We need not produce for you the warrant in the law, the statute enacted by the lawmaking power, which permits us to act in behalf of the Government in holding possession, in taking, it or in disposing of the property."

That, I think, is the crux of the question which is now before you.

Is it not the law, and clearly the law, that the defendants
841 in this case must produce, to support their cloak of sovereign immunity, an authority under the law, a statute enacted by Congress, which confers upon them as the representatives of the Government the right to act for the Government in asserting its claims on its behalf?

A brief statement of the facts in this case will clarify, I believe, the nature of the action. The allegations of the complaint show that for many years prior to 1924 the Dollar Steamship Line and its predecessors in interest had successfully carried on service in essential foreign-trade routes in trans-Pacific, and round-the-world services, among others. It shows that about 1923 that company purchased a large number of vessels, which were later augmented for the purpose of enlarging that service and increasing it.

In 1928, in pursuance to the Mail Pay Subsidy Act, the Dollar Steamship Line entered into contracts in pursuance of which nearly $16,000,000 in trans-Pacific liners was invested, for the purpose of availing itself of the law then in existence and in pursuance of which the Government undertook to pay mail pay for ten years, and for a like period the company undertook to maintain minimum service in essential trade routes.

In 1933, the depression having occurred which affected all American business in a manner only too well known to all of us, in a period of the worst financial depression the country has known, and with further difficulties arising out of the de-
842 clared or undeclared state of war between Japan and China, the Dollar Steamship Lines was in financial difficulty to the extent that the Commission, or its predecessor in interest, rather, was compelled to and did extend the maturity dates of the indebtedness to the Government then existing. As a matter of fact, that was no more than the policy of the law, the policy of statutes enacted at that time, contemplated. It was no more than the RFC was organized to do for business in general.

We then came to the year 1936, when the Merchant Marine Act of 1936 was enacted. That act, you will recall, provided that on June 30, 1937, all of the existing mail subsidy contracts should be

cancelled; that statute providing that those parties who suffered from that cancellation should have their remedy to settle claims for damages arising therefrom; and the Merchant Marine Act then providing that in the future the aid to be given to the American merchant marine would consist of operating-differential subsidies.

Although the contracts between the Government and the company thus were cancelled and terminated on June 30, 1936, no adjustment or settlement was made of the damage claims of the company arising out of the cancellations, and no operating-differential subsidy was granted to it until January of the following year—in the meantime the company necessarily maintaining service at heavy losses on all the scheduled trade routes.

843 In January a six months' subsidy was granted. It was granted in connection with the complete reorganization, in pursuance of which the following occurred:

First, the company was forced to discontinue and waive all claims for damages arising out of the cancellation of the ocean mail contracts, approximating six million dollars. The stockholders contributed $500,000 in cash to the capital. Creditors to the extent of approximately $3,000,000 surrendered their claims for stock. Trade creditors received partial settlement in cash, part in deferred payments, and part in stock. And the Maritime Commission exacted the undertaking that henceforth the directors would be those approved by the Commission itself.

With this rearrangement of the company's affairs completed in April of that year, with control of the directorate in the hands of the Commission, with these large additions to the capital, it might have been assumed that thereafter the operating-differential subsidy would continue to be paid. Instead, when that expired, in June of the same year, an additional operating-differential subsidy for the future was not granted. Instead, the company, prior to August 15, 1938, was presented with an alternative, and the stockholders were likewise so presented.

The alternative was, on the one hand, an immediate enforcement of all obligations owing to the United States, with
844 no relief in the form of a subsidy. That alternative, according to the language and statement in the record of the Commission itself, meant enormous loss to the stockholders, it meant loss to trade creditors, it meant a discontinuance of service into essential trade routes, with the resulting damage to shippers and consignees, and an irreparable damage to those employed as well as those otherwise interested in the company.

The other alternative was the contract of August 15, 1938; and that contract, so far as it is material to this cause here, consisted in a transfer, an agreed transfer, by the stockholders representing

some 92 percent of the voting stock of the company, of that stock to the Commission.

It represented, number two, a purported release of two parties on a portion of the indebtedness, as guarantors or accommodation makers of notes to the United States. And, other than that, a careful perusal of the contract will find no change in the situation. There was no release of any indebtedness, no elimination or reduction of any indebtedness. The shares were so transferred, free and clear of all incumbrances, to the Commission. And the Commission held those shares free and clear of all incumbrances until September of 1943, at which time or thereafter, all of the indebtedness existing on August 15, 1938, and prior thereto to the Government had been fully paid, satisfied, and discharged.

845 Nevertheless, upon demand for return of the stock, the Commission members have refused to return it, asserting that they were authorized and under the contract entitled to receive not only payment of all sums due the United States in full, but also entitled thereafter to retain indefeasible and absolute title to the shares transferred—and, if you please, to dispose of them by public offers—rather than redeliver them to the plaintiffs.

The position of the plaintiffs in this case, supported by the admitted allegations of the complaint, is this:

First, that the contract itself, which was made August 15, 1938, actually in fact and in law transferred and conveyed to the Commission on behalf of the United States a pledge or a title as collateral to the shares only; and that when that contract was fully performed and all of its obligations satisfied, on at least some time after September 1943, that contract disappeared, as far as any relations between the Government and these plaintiffs are concerned; for, the principal debt having been paid, the Government no longer had any interest in the stock, and these defendants withhold it without any color of right, under contract or otherwise.

The COURT. Mr. Harrison, the contract on its face purports to be an absolute delivery of title; it purports to convey an absolute title, doesn't it?

Mr. HARRISON. If the Court prefers that, I will address
846 myself to that point at once.

The COURT. Do it in your own time; but I would like to hear you on it, because as I read it, I just don't get a pledge out of it in its terms.

Mr. HARRISON. Yes, Your Honor. The contract itself and the quotations in the brief of the defendants, referring to it repeatedly, in numerous parts provide that the stock shall be transferred free of all liens and incumbrances. The indorsements themselves are indorsements which upon their face transfer the title to the shares

of stock. However, the Court has said that there is nothing in the contract to indicate that they are a pledge. May I say, however, by the same token, that there is nothing in the contract to indicate that they are not a pledge; and the mere fact that legal title to property of any character, whether it be real property or personal property, has been conveyed to an individual, does not interfere, when the entire transaction is regarded, with the conclusion that it is transferred as security only.

If there were any doubt about that question—there being no specific provision one way or the other in the contract—we would be entitled to resort to the contract as a whole first and to the ordinary rules of statutory interpretation, to determine the legal effect of the contract.

In the contract itself, in the first place, there is the provi-
847 sion that the parties intend to do only what they are legally able to do. We will presently present to you our views concerning the authority of the Commission to take anything but a qualified title. If it be true—and we will presently prove to you as we believe it is true—that the Commission had no power on August 15, 1938, or later, to take title, to take other than a qualified title, then under that specific provision of the contract they took none.

Independent of that provision of the contract itself, where the power of the Commission, under the law, extended only to the taking of collateral or a qualified title, the making of any contract by which if would take more was of no significance whatever and the contract must be interpreted, under well-settled rules of statutory construction, to conform to the law.

And where the law vested in the Commission a limited power, and where the contract is susceptible of such construction, then the contract means that only that qualified title was taken—because the courts will be reluctant to impart to a contract a meaning which is illegal or in excess of the authority of a public officer to make.

It is a well-settled rule of construction that where there is any doubt concerning the meaning of a contract, the court will avoid a meaning which is burdensome, oppressive, or unjust in its results, or which has a confiscatory result.

In this case, the interpretation which would be placed
848 upon this contract would mean that the Government of the United States intended to and did and does now intend to acquire not only these shares of stock but full payment of every obligation which existed at the time the transfer was made. The burdensome and unjust result of that interpretation is that the stockholders in this case must stand by and see every debt and obligation owing to the Government paid, and must at the same time surrender their property consisting of their equity in the company.

The courts as a rule of statutory construction have said that the laws that exist at the time the contract is made will be read into the contract. The law at the time this contract was made plainly limited the jurisdiction of the Commission to the making of title to property only under section 207 of the Merchant Marine Act, taking title to improve or protect or preserve the collateral then held by the Commission as security for the payment of obligations. That limited authority is then a part of this contract, and the contract will be so interpreted.

In making those statements, may it please the Court, I assure you I am not indulging in any reckless conclusions of my own. Each of those statements has been stated and upheld by the United States Supreme Court. I refer, for example, to the case of Great Northern Railway against Delmar Company, in 51 Supreme
849 Court at page 579, holding that courts will adopt the construction of a contract which validates it, rather than the alternative invalidating the contract. And we assert that under the law, under section 207 and the other sections of the Merchant Marine Act, this contract will be validated in whole if this contract be read, as of that date and now, to convey a qualified title for the purpose of security only, and that to read it any other way necessitates holding it is, in part at least, invalid under the law.

The Supreme Court has said, in Noonan against Bradley, in 76 U. S. 394, that when an instrument is susceptible of two constructions, one of which works injustice and one of which is consistent with the right of the case, the latter will be favored.

And in this situation you are to impart to this contract a construction the necessary meaning of which is that the Government intended and authorized these defendants to act in such a manner that the Government would receive not only full payment of all the money owing to it, but the property of these plaintiffs as well. That is what the defendants ask.

The Supreme Court has said that the laws governing a contract, which exists at the time and place of its making and where it is to be performed, enter into and form a part of it, as if they were expressly incorporated into the contract itself. I refer, for example, to Brine against Hartford Fire Insurance Company, 96 U. S. at page 627.

850 The Supreme Court has held that a contract should not be construed as providing for an unreasonable forfeiture, if its language admits of a more equitable interpretation.

So we say that this contract, fairly read, in light of the appropriate rules of interpretation—read by the four corners, read in light of the law which existed when it was made, read in light of the authority which the lawmaking power conferred upon these defendants as commissioners, read in the light of the equity—

means that the transfer of title, although unqualified in form, although neither referring to nor repudiating an intent to create a pledge, must be so read and the contract so enforced that the contract becomes valid, reasonable, equitable, and was completed, in respect to its performance in September of 1943. And so construed and so read, there is no contract before you today which could on any theory form any basis for a claim, a right, of the defendants to retain these shares.

We assert, then, that there is no contract in this case at all. Our suit is to recover property rightfully held by agents of the Government, under authority of law, until September of 1943, and wrongfully withheld, without authority of law or contract, today, notwithstanding demand and refusal for delivery.

This case is a case in tort. It is a case ex delicto.
851 It is a case to recover property unlawfully withheld, without warrant of authority.

Let me again point out to you, however, that the jurisdiction of this Court is based upon a second well-substantiated ground. It is this and this simply—that these defendants, although presuming to cloak themselves with the veil of sovereign immunity, have been unable and are unable, to direct this Court's attention to any provision enacted by the lawmaking power permitting them to assert this claim or permitting them to hold possession for the Government, or, if you please, permitting them to sell this property for the Government.

These defendants cannot, by simply coming into this Court, stay the jurisdiction and the action of this Court by their simple statement that, as agents of the Government, they act for the Government, because, acting for the Government—just as this Court does—they must act under the law. And until they can offer to you their warrant of authority for a claim which they make here, for a contract which they claim they have made in the past, for their possession, for their right to sell, they stand before you as individuals, not as the Government.

Proceeding to a discussion in the reverse order, if I may, may it please the Court, the grounds of jurisdiction upon which we first wish to refer to the appropriate authorities, are that these defendants do not have, under the law, any right to
852 possession on behalf of the United States, or any right to claim possession or title on behalf of the United States. They are, therefore, personal defendants. If they are without that authority, they were without it in August of 1938, and they could not create that authority by making a contract not authorized under the law. They could not create it by press releases. They could not create it by intention. For if administrative officers could create power by writing contracts, the law would mean

nothing. Their authority would be limited only by the contracts they could make and not by the law.

Obviously we would be in a serious quandry if press releases could create authority; for I assure the Court I alone know of millions of press releases, and I am sure the Court does.

And even their intentions, however good, however sincere, however profound, cannot be used as a substitute for the law itself.

The COURT. I think I can take judicial notice of that.

Mr. HARRISON. And so when the defendants in their authorities assert cases like Metropolitan Trust Company against McKinnon, in 172 Federal 846, and other cases to the effect that an agent's title is the title of his principal, and an agent's act is the act of his principal, they are dealing with cases where the prin-
853 cipal has either granted the authority or, by ratification or adoption, has made the act of the agent the act of the principal.

But here the very gist of this action, may it please the Court, is that the principal, the sovereign power of the United States, represented by the Congress and the lawmaking power, has never created this agency, has never conferred this authority, and has never ratified the acts or claims of these defendants. And so we can see no relevancy to cases of that character.

We think that the situation we have here is well illustrated by a discussion to be found in the case of United States against Ferguson, in 78 Federal 103, that being a suit in which the Postmaster General held certain funds. It seems these funds represented what one of his subordinates had extracted from the person of a thief who had stolen money from the post office.

The inspector, having extracted these funds from the thief, turned them over to the Postmaster General. The thief, when he was prosecuted, assigned that money to his counsel, and the counsel sought to recover it from the Postmaster General; and he was awarded the money, even though it was then in the possession of the Postmaster General. For, as the court said—
854 "* * * the inspector had no authority, under the laws of the United States, or no color of authority, to take into his possession and assume to retain money belonging to Atwood"—Atwood being the thief—"even though Atwood had stolen an equivalent sum of government moneys from a post office."

The court pointed out that—

"So long as the money was in the hands of the inspector, or of his superior officer, the Postmaster General, there was no claim against the United States, and only one against the officers

of the government, who had transcended their authority and made themselves individually liable for the consequences.

855 And the position of the plaintiffs here is that in asserting title after the debt is paid, in claiming title today, in claiming the right to possess, they have transcended their authority, for the lawmaking power never conferred it upon them.

We believe that the case of United States against Lee is controlling in this case. That was a case decided in 1882; it was reported in 106 U. S., page 196. In that case, may we point out to the Court that the facts are, so far as we can see, in every essential detail identical with the facts in this case. In that case there was a suit which involved the possession of certain property in Virginia. The property was in the possession of officers of the Army in connection with a national cemetery. It had been in the possession of agents of the United States for upward of ten years. It was claimed by these agents as officers of the United States and not in their individual capacity. It was claimed in pursuance of a certificate issued by a commissioner who in turn was acting under a statute of the United States and who executed a certificate or conveyance of the lands to the United States.

In the first place, then, we have in both cases this: A plaintiff suing ex delicto for the withheld property. We have in that case defendants who were officers of the United States Army, and in this case members of the United States Maritime Commission.

There the officers of the Army asserted they were
856 acting on behalf of the Government and asserting a claim on behalf of the Government. The same defense as to jurisdictions is made here.

In that case the property not only was in the possession of these agents of the Government, but had been for more than ten years. Here, again, mention is made of the fact that this property has been in the possession of the defendants, as agents of the Government, and has been for some seven years.

In this case it is said that there was a contract which could be interpreted as giving color of authority. In that case, the agents of the Government were holding on a conveyance to themselves and on a conveyance executed by a commissioner of the United States in favor of the United States.

Nevertheless, although the facts are entirely parallel, the Supreme Court of the United States held that those defendants were acting in their individual capacity, that the suit was one to recover possession ex delicto, and that since these officers were holding under an invalid title, since they were acting without any warrant in the law, possession must be restored.

And in that case, as in other cases following United States against Lee, the Court pointed out that the United States was not a party to such a suit, that it had no interest in the suit whatever, that the determination of the right to possession between
857 plaintiffs and defendants was no bar to a subsequent suit by the United States or to any subsequent claim that might be authorized on its behalf. But that in the then condition of facts, to-wit, defendants asserting they were acting as agents of the Government, but without authority in the law, that they could make no claim for the Government, they could not retain possession for the Government, and consequently the judgment went for the plaintiffs—as it should in this case, upon an identical set of facts.

It has been suggested that there are limitations that have been placed upon this case. It has been suggested that the fact of possession delivered here to the defendants distinguishes it. But in the Lee case the possession was peacefully delivered to the defendant officers under a conveyance.

In the case of Tindal against Wesley, in which there is a limited discussion of this same subject, we again find that the officers of the United States had been continuously in possession of the disputed property. As a matter of fact, in that case the possession of the property had never been in the plaintiffs. It was property of the State. The State, in pursuance of a statute, had provided for conveyance of such lands upon compliance with certain proceedings. The Court held that the plaintiffs there had complied with those proceedings and with the statute, and nevertheless officers of the State in that case were refusing to deliver possession.
858 It held they were acting without any warrant of authority under the law; that they had transcended their authority. It was held it was, therefore, a perfect action against them in tort for recovery of land. And the Supreme Court upheld that judgment.

Again, in the case of Stanley against Schwalby, at 147 U. S. 508, we have a situation in which officers of the United States Army had long been in possession of land, had been in possession of it for a great many years. Again the plaintiffs, alleging title, brought suit against them in their individual capacities to recover the property. There, again, the plea was made that this property was in the possession of agents of the Government. There again the plea was made by the defendants that they were asserting a claim on behalf of the Government; and in support of that claim they introduced deeds and proved themselves, or claimed to be, innocent purchasers for value on behalf of the United States. Notwithstanding that, the Court held these de-

fendants were in their individual capacities acting without authority under the law; that the judgment there did not bind the Government; that the Government had no interest in the issue; that they were without authority to represent the Government—and the Supreme Court upheld a judgment of recovery.

An interesting development in the Stanley against Schwalby case is that in a later decision of the same name, the issue of title as between the Government and the individuals arose.
859 It arose in this way, that in a suit to recover the land, the same character of land, in fact, the same land as was involved in the prior suit, the defendants asserted they had occupied the land and for the statutory period, as adverse possessors, and that having done so, a title by adverse possession was created, and they asserted that title of adverse possession on behalf of the United States. The Supreme Court permitted them to do that and gave judgment for them. For, said the Supreme Court, since these officers of the Army were wrongdoers, since they were transcending their authority, the plaintiffs had always a right to recover this property in an action ex delicto. But having refrained from doing so, and the officers having occupied the land under a claim of right, the Government was entitled to prevail.

The same results happened in the case of Hussey against the United States, 222 U. S. 88. And so throughout these cases, from the beginning until now, it has been consistently held that United States against Lee represents the law. It represents the law, that in an action by plaintiffs against defendants as individuals, the mere fact that those defendants claim authority to represent the Government, the mere fact that they happen to be agents of the United States, the mere fact that they claim under documents which are invalid, does not alter the character of the action as between individuals, does not entitle the defendants to any
860 sovereign immunity, and, where the plaintiffs have established their right to the property, entitles them to relief in a suit for that purpose. The distinction between that and the case cited by the defendants is readily determined from the cases which the defendants cite.

In an effort to demonstrate that there is involved in this case a question of title, as between the United States and the plaintiffs, the defendants have referred to a series of cases. One group of cases is Louisiana against Garfield, Oregon against Hitchcock, Nagamab against Hitchcock, Minnesota against Hitchcock, Morrison against Work—in each of which, without exception, there was involved lands the titles to which were admittedly in the United States itself.

In one group of cases which is exemplified by the Louisiana against Garfield, the State of Louisiana proceeded for the purpose of quieting title to lands of the United States which the State of Louisiana asserted had, under statutes of the Federal Government, become vested in it as swamp and overflow lands. There was no claim in that case that any officer had exceeded his authority under the law. There was no claim in another case but that the Secretary of the Interior was complying with the positive acts of Congress in all respects. And in the case of Louisiana against Garfield, as in every other familiar case, the courts have held that you cannot come in and seek to quiet title against
861 the United States and assert that you are doing anything but suing the United States.

There is no attempt to quiet title against the United States here. There has been on injection in this case of any issue in pursuance of which this Court is asked to foreclose any rights of the United States. All that is involved in this case is the remedy against these individual defendants who withheld property unlawfully and without warrant or authority under the law.

In other cases such as Naganab against Hitchcock and Minnesota against the United States, there were attempts to invoke the aid of the court to direct the Secretary of the Interior or other Government officials as to how they should administer Indian lands or Indian funds. And the Court held that obviously they were lands and moneys of the United States, as to which there was no dispute at all, and that all the plaintiffs were seeking to do was to interfere with the administrative duties of public officers in the performance of their statutory functions.

We are not asking this Court to interfere with any function or duty of any officer under the law. Instead we assert that these defendants cannot and have not produced a scintilla of authority under the law to hold the stock, to claim the stock, or to sell the stock—and thus they stand divested of any immunity.

Other cases are cited by the defendants, such as the case
862 of Goldberg against Daniels, and Wells against Roper. In the former case a suit endeavored to invoke the aid of a district court to compel the Secretary of the Navy to deliver to him a battleship, because he was the highes. bidder. And the district court properly held that all that was sought was to compel this officer of the Government to enter into and perform a contract.

In Wells against Roper the court held it wouldn't give relief by enjoining the Postmaster General from annulling a contract—because in both cases, all that was being asked was that a contract be enforced and that property, either in the form of a battleship or of funds in the Treasury, which were admittedly the property of the United States, be delivered—creating necessarily an issue

in which the sole question was, one, the performance of a contract with the United States; two, the delivery to plaintiff of money or property admittedly of the United States.

In neither of those cases was there the slightest protension the officer was using in excess of his authority under the law. In neither case was it claimed he was not performing a public function under the statute. It wasn't claimed he could not invoke the sovereign immunity, because the sovereign had not authorized him.

And in those cases which have been cited by defendants, the courts have consistently and regularly distinguished
863 between such cases and the cases like United States against Lee, upon which the plaintiffs rely.

For example, in the case of Morrison against Work, that you will recall, was one of the cases in which it was admitted that the lands involved were the property of the United States and the question involved was as to whether the disposition of those lands was a matter which was subject to the court's jurisdiction. And the Court said there:

"The case at bar is unlike those in which relief by injunction has been granted against the head of an executive department, or other officer, of the Government, to enjoin his official act on the ground that it was not within the authority conferred, or that it was an improper exercise of such authority, or that Congress lacked the power to confer the authority exercised. In those cases the act complained of either involved an invasion or denial of a definite right of the plaintiff, or it operated to cast a cloud upon his property. In some of those cases the defendant would have been liable individually in trespass unless he could justify under authority conferred. Morrison and the other Chippewas have no right of that character. The lands ceded are the property of the United States. It has, confessedly, power to dispose of them."

864 And in the case of Jumel——

The Court. I know the case—Louisiana against Jumel.

Mr. Harrison. In the case of Louisiana against Jumel, as I recall it, may it please the Court, there was an attempt to enforce a contract with the State, a contract authorized by statute, calling for issuance of bond at a certain rate of interest, and with a given form of tax rate attached thereto. Subsequently by amendment to the constitution of the State, new rights were conferred, the interest rate was reduced, and it was provided that the taxes should be diverted to another purpose.

Obviously they were dealing there with the moneys of the State of Louisiana. The attempt was made to ask the court to compel the State to make another and different disposition of the

property from that which the lawmaking power of the State had directed; and it said, and plainly said, that it wouldn't compel officers of the State to deviate from the laws of the State.

We do not ask that here. We ask that these defendants be treated as individual defendants, not to compel them to disregard the laws of the nation; but to treat them as individual wrongdoers, because they act without authority under the laws of the nation.

In the case of Cunningham against Macon, which was a case where a State attempted to impose a lien, a tax lien, upon
865 property of the Government, it was held this necessarily involved a dispute between the State and the Federal Government. But while properly holding that that was true, again the Supreme Court said:

"Another class of cases is where an individual is sued in tort for some act injurious to another in regard to person or property, to which his defense is that he has acted under the orders of the Government."

And that is the only possible defense in this case.

Continuing, the Court said:

"In these cases he is not sued as, or because he is, the officer of the government, but as an individual, and the court is not ousted of jurisdiction because he asserts authority as such officer. To make out his defense, he must show that his authority was sufficient in law to protect him."

866 And we assert again that it is impossible in this case for the defendants to point out the law which will protect them against this cause of action against them for the recovery of these shares or the certificates representing the same. In that connection it is important, we believe, to point out to the Court that this is the only remedy which the plaintiffs have.

The COURT. Why haven't you a remedy in the Court of Claims, on the theory that if they hold it was without right under the present situation, there is an implied contract to return it or an implied contract to pay for it?

Mr. HARRISON. Because, may it please the Court, that right can exist only where there is a contract which is made by authority of the Government; and that where, as here, the acts of the defendants are without authority under the law——

The COURT. Has the Court of Claims no jurisdiction under an implied contract?

Mr. HARRISON. Unfortunately not, may it please the Court; and I would be glad to cite the cases to you on that subject.

The COURT. No; I don't think it is necessary really to go into it, because it wouldn't have anything to do, one way or another, with the jurisdiction, or would it?

Mr. HARRISON. Well, I think it might for several reasons.
867 In the first place, one of the underlying reasons assigned by the Supreme Court for the law it has developed is because of the fact that if the law in United States against Lee be overturned, it would in a case of this kind leave the United States without any remedy whatever; and an officer of the United States, on his own and without authority of the law, could misuse your property and you would be wholly without remedy, simply because he claimed to be acting for the United States.

This, may it please the Court, is a case where the officer is without statutory authority for what he does. Now, were this a case in which the defendants were admitted to be acting under authority of the law and to have taken this property, they might well create an implied contract to pay the reasonable value thereof to the plaintiffs. But where the defendants are acting without authority of the law, they are acting ex delicto; and where they do, there is no liability in the Government to pay the reasonable value of the property.

The COURT. Even if they act believing they do so under authority of law?

Mr. HARRISON. Correct, Your Honor.

In the case of Pledger against United States, cited by the defendants themselves, that was an action in the Court of Claims. It was an action in which the plea was for the payment of the reasonable value of a steam shovel, not in pursuance
868 of a contract, but upon the claim the Government had erroneously relied upon a contract in taking possession. The Court of Claims held—and the Court of Claims was upheld by the Supreme Court—that since the Government officials took under the terms of the contract; that since they, under the authority of law, retained possession, they were obliged to pay under the terms of the contract itself.

But, said they, this man who seeks to recover the reasonable value thereof, can only prove his right to recovery on the ground that this contract does not give a right to the officer to act; and in that case, said the court, it would be a tortious act, and he would have no right of recovery in the Court of Claims at all.

Specifically quoting the Supreme Court in Klebe against United States, 263 U. S. 188, cited by defendants, in disposing of the attempt of plaintiff to recover the reasonable value of property alleged to have been unlawfully seized, the Court said:

"If the Government's claim is unfounded,"—that is to say, its claim it had a right under the contract to retain the property and pay the contract price—

"If the Government's claim is unfounded, a property right of plaintiff was violated; but the cause of action therefor, if any,

is one sounding in tort; and for such, the Tucker Act affords no remedy."

869 In the case of United States against Goltra, in 312 U. S. at page 270, the case is interesting because it, together with Golltra against Weeks—also cited in the brief for plaintiffs in this case—gives the whole history of a dispute so similar to this that it is striking. You will recall that in Golltra against Weeks, Army officers of the United States had claimed that the terms of a charter party of certain tugboats operating on the Mississippi River had been violated and they were entitled to seize possession of the boats, and they did so. The charterer brought suit upon the ground that this was an unlawful taking of the property; and the right of plaintiff was upheld by the United States Supreme Court, which found that since the contract gave to the officials of the Army no right to the seizure, they were acting without authority under the law, their conduct was tortious, and possession of the boats chartered was surrendered to the charterer.

However, you will realize that in the interval these boats had been in the possession of the Engineers, and consequently in that period a loss had been suffered. For that loss, however, there was no remedy, had it not been that Congress passed a special enabling act permitting the plaintiff in that case to pursue his remedy in the Court of Claims for the reasonable value of the use of the boats during the unlawful seizure."

870 The Supreme Court there said, among other things, that this was not a taking by eminent domain. It said the distinction between property taken under the authorization of Congress, and property appropriated without such authority, has long been recognized. That acts of Government officials in taking property without authorization of Congress conferred no right of recovery upon the injured citizen.

Again, in the case of Pierson against the United States, on 267 U. S. at page 427, there the Government had leased certain land and under the lease there was specific authority for the United States to place improvements thereon, but the provision concerning what should be done with respect to the improvements on the termination of the lease. The Government officers removed the property and refused to pay therefor. A suit was brought for the reasonable value thereof, and relief was denied, the court saying the petition showed no ground of recovery on an implied agreement on the part of the Government to pay the claimants for property taken for public use; that no recognition of the plaintiff's title was alleged in the petition; that, on the contrary, the facts shown plainly indicated that the buildings and improvements were removed by the Government as its own property under the color of right.

The court said that under those circumstances no agreement to pay for them could be implied, and whether the
871 Government's claim was well or ill founded was immaterial. If it was ill founded and the claimant's property rights were violated, the cause of action therefor would be one soundly in tort, for which the Tucker Act affords no remedy.

In other words, may it please the Court, the very basis of jurisdiction in this case is the lack of authority under the law of the country, for the defendants to retain the possession of or assert these claims. That means that the Government itself owes no obligation to these plaintiffs. It means that the sole obligation is of the defendants themselves in their individual capacities. And for their wrongdoing, not authorized under the law, there is no provision for recovery in the Court of Claims.

Had, on the other hand, the Government empowered these defendants to exercise the power of eminent domain, we would have had our right to recovery either under the law or the Constitution. And even if the act of Congress did not provide for reasonable compensation, but otherwise empowered these officers to act, then the right of action against them could be founded solely upon the ground that the act of Congress is unconstitutional.

The fact remains, however, we cannot recover in the Court of Claims so long as we rely, as we do here, upon acts of these defendants ex delicto performed without authority of law.
872 I think, may it please the Court, that the statute creating the Court of Claims and vesting it with jurisdiction is fairly plain itself. I am sure there is no dispute in the authorities that a tortious act of defendants is never the basis for an implied contract on the part of the Government to pay the reasonable value thereof.

And so we stand before you with no remedy but this. We stand before you relying upon this long line of cases, numerous examples of which appear in the plaintiffs' brief, in which the doctrine of United States against Lee has never been questioned. As a matter of fact, the suggestion in the memorandum of the defendants here that some doubt has been cast upon that doctrine is so far from the fact, that in the quite recent case of Kiefer & Kiefer against Reconstruction Finance Corporation, reported in 306 U. S., Mr. Justice Frankfurter, speaking upon the general subject of immunity, said—and, incidentally, said it, citing United States against Lee—that far from its being a fact that there was a tendency to extend the doctrine of sovereign immunity, instead he said that the climate of opinion today, and the legislative policy of Congress at this time, is in the direction of limiting, not extending, this doctrine; and that the liberal policy of pro-

tecting the rights of suitors so that they may have their day in court, is the end being sought by Congress rather than its limitation.

873 There have been cases cited here which I confess I find great difficulty in applying to this case itself, even remotely. I say without serious fear of contradiction that even in the cases cited by the defendants, the doctrine of United States against Lee is constantly referred to and accepted. There are references in the memorandum of defendants to the case of Lincoln Electric Company and the Mine Safety Appliances Company, the latter of which was the subject of a very recent opinion by the Supreme Court of the United States. And I can think of no decision, in a case dissimilar from this, which has more clearly stated the doctrine and which more clearly upholds the jurisdiction of the Court in this case.

That was a case in which you will recall, may it please the Court, there was an attempt to enjoin an officer of the Government from performing his responsibilities and duties under the Renegotiation Act. What he had done in this particular case was to direct another officer of the Government to withhold payments upon other contracts, as set-offs against what would otherwise be due to them under the contract renegotiated.

The suit, therefore, was upon the contracts from which deductions had been made in the amounts due. The lower court, as well as the Supreme Court, held that there was no right to entertain the suit. It held it upon numerous grounds. In the

874 first place, it held there was no right to entertain the suit, because what the plaintiffs were seeking to do was to compel officers of the Government to pay out funds of the Treasury under the terms of a contract which they were seeking to enforce. There was a naked claim for moneys due under the contract, obviously enforceable in the Court of Claims and obviously related to compelling the performance of a contract to which the United States and the plaintiffs were parties.

There was no claim, in that case, that with respect to the performance of their duties, the defendants were acting otherwise than under the terms of the law itself. There was no claim that their action was unauthorized under the law.

The COURT. The claim was that he was acting under an unconstitutional law, wasn't it?

Mr. HARRISON. True. But the relief sought, may it please the Court, wasn't to attack action under an unconstitutional act. The relief sought was to collect the balance due under contracts from which deductions had been made at the request of the officer conducting the renegotiation. The nature of the remedy, therefore,

was one to recover the balance due upon that contract; and that necessarily involved, first, a money claim under the contract against the Treasury; secondly, the performance of the contract by the United States; and, third, the taking of property from the Treasury which was admittedly property of the United States.

875 In every single instance we have a condition which does not exist here. We seek no money. We seek no payment from the Treasury. We seek here merely to have our property returned to us—property which we assert is withheld by these defendants without authority under the law.

Might I point out to you that in discussing this case the Court said the appellants contend that the action seeks to prevent a tort by the Secretary, acting as an individual and not as an officer of the Government, consisting of a trespass against appellants' property. That is our claim here, may it please the Court.

The Court continued, saying that equitable relief is necessary because appellant has no adequate remedy otherwise—and that is our claim here.

The Court went on to say that the complaint, as filed, in the absence of any further proceedings, provided a basis for the equitable relief sought. And he cites Philadelphia Company against Stimston, which in turn is directly based upon United States against Lee.

May we turn from this language to the complaint in this case, may it please the Court? We assert that a tort has been committed here by the members of this Commission. We contend they are acting as individuals and not as the Government. We contend that their conduct consists of an unlawful withholding of our property, and that equitable relief is necessary be-

876 cause not only is there no adequate remedy, but there is no remedy whatever at law.

Now, having established this case as being literally within that language, the Court goes on to say:

"For according to these cases, if we assume that appellants' allegations, including the one that the Renegotiation Act is unconstitutional, are true, the fact that the Secretary had acted pursuant to the commandment, should make no difference whatever"—and in that case it made no difference whatever, because what the plaintiff sought to do was to recover upon a contract as to which the contract renegotiated had no relationship whatever. All that he was seeking was to compel the Secretary of the Treasury to disburse from the Treasury the balance due upon that contract.

We see no such remedy here. We have no contract here. We have a tortious withholding, without authority under the law.

The Court, after stating that the Government's essential interest, in determining whether it is an indispensable body, must be determined in each case by the nature and effect of the proceeding as it appears in the record, then cites an ex parte case. It might just as well have cited the cases cited here by the defendants, cases in which there was no question that either there was property of the State involved, or there was an attempt to recover
877 money from State treasuries; for in that particular case it was the attempt of the suitors to recover from the State of New York, indirectly, upon obligations recognized by the State of New York, by appropriations for damages done by vessels operated by its authority.

In none of those cases was there any question of the authority of the defendants to act, as there is here. In all of those cases there was an attempt to collect funds from the treasuries, upon many grounds, such as the performance of contracts.

There they were attempting to secure funds from a public treasury. Here we are attempting to recover property which has never been in the public treasury, which is still in the hands of these individual defendants, and is in their hands without any warrant of law to hold it or claim it for the Government.

Going on, the Supreme Court said:

"Nor does the record present any other circumstances that would make the Secretary sueable as an individual * *. *, certainly when the action the Secretary proposed to take is not a violation of any express command of Congress. The sole purpose of this proceeding is to prevent the Secretary from taking a certain action which would stop payment by the Government of money lawfully in the United States Treasury, to satisfy the Government's and not the Secretary's debt to the appellant."
878 In other words, the gist of the action was a suit upon the balance due upon a contract between the suitor and the United States itself, and the remedy was the payment from the public treasury of the balance due upon that contract.

Here we bring no suit upon a contract. Here there is no contract in legal effect. Here there is no authority at law. These defendants act solely in their individual capacity, without the protection of authority conferred by the Government at all.

"The assumption underlying this action is that if the relief prayed for is granted, the Government will pay and thus relinquish ownership and possession of the money."

And again we reiterate that is not the situation here.

The Court went on and said that in effect this was an indirect effort to collect a debt allegedly owed by the Government in a proceeding to which the Government has not consented. And may I point out that the very brief concurring opinion of Mr.

Justice Reed stated that in his view a legal remedy exists in the Court of Claims.

In other words, in that case the Supreme Court had before it a suit for a money judgment, being the balance due upon a contract and nothing else. It did not have before it an officer claiming to act for the Government in withholding the property of suitors, as was the case in United States against Lee, in
873 Stanley against Schwalby, in Correa against Barbour, and finally in Blondet against Hadley.

Your Honor will perhaps recall in Blondet against Hadley there was a distinction drawn between, on the one hand, an attempt to quiet title against the United States and, on the other hand, a withholding unlawfully by an officer of the United States of the suitor's property. The court there pointed out that it could not quiet title at the instance of a citizen against the United States, for that necessarily involved the rights and interests of the United States, and created an issue with the Federal Government. But in the very same suit in which the same court so held, it held, as the Court should hold here, that where the relief sought is to take possession from an officer acting without authority under the law, and to restore it to the rightful owner, the plaintiffs, the Court not only has jurisdiction to do so, but should exercise that jurisdiction favorably.

Now, I concede, may it please the Court, that that entire argument of ours is predicated upon one essential thing, to-wit, lack of authority. I agree that if the defendants in this case can produce for this Court an authority for that which they have done, under the law, then this Court lacks jurisdiction.

The COURT. Let me ask you this, and you can either answer it now or whenever you want to: They did, you concede, have authority to accept collateral?

880 Mr. HARRISON. Correct.

The COURT. They would have had, therefore, the authority to accept this stock as collateral.

Mr. HARRISON. Correct.

The COURT. If the indebtedness was unpaid, they could dispose of the collateral.

Mr. HARRISON. Correct.

The COURT. And in disposing of it, in the absence of an offer, a bid, they could buy it in?

Mr. HARRISON. Correct, may it please the Court.

The COURT. Why, then, can't they do directly what they could do more or less indirectly by a process of several different steps?

Mr. HARRISON. May it please the Court, there is quite a difference between collateral and the rights of a pledgeholder, and

the rights of one who is an absolute owner and independent of debt.

The COURT. In that as the holder of the stock, they are liable?

Mr. HARRISON. No; I think the difference would be more fundamental than that. As a matter of fact, authorities were cited in this case by the defendants upholding generally the right of public officers to receive security for the payment of obligations to the United States—cases which also held that, having
881 taken such security, naturally the officers could enforce that security.

I not only question but assert that what the Commission in fact and in legal effect here did was to take security; and when it took that security, had there been a default in the indebtedness it could have foreclosed and secured all the rights of a pledgeholder. But, necessarily, when the rights of the pledgeholder are exercised, it is upon default; the sale is because of default, and default only; and the power of sale is incident to the default; and the obligation of the pledgeholder is to dispose of the collateral at the best possible price and on the best possible terms, having due regard to the owner of the equity as well as the pledgeholder, and to apply the proceeds to the diminution or payment of the debt, and the balance, if any, to be paid to the owner of the equity.

In that respect the difference between the qualified title of the man who holds collateral and the position of the man who holds a debt, trust or mortgage upon real estate, is very little, if any—or a man who holds a defeasible title in fee as security for a debt. In every instance the right of the holder of the lien, the right of the holder of the pledge, and the right of the holder of the mortgage, is limited to default, and his right of sale is dependent upon default.

The COURT. You say there was no default at the time this transfer was made?

882 Mr. HARRISON. No, may it please the Court. At that time there was indebtedness to the Government overdue. However, funds were borrowed, with which all of the overdue payments were made. And at the time these indorsements and the contract were made, it recognized the existence of that indebtedness and the pledge of this collateral.

It wasn't—and I do not think the defendants ever will claim—that the intent was that there should be an immediate foreclosure on this pledge. And the fact is that there has never been any foreclosure on this pledge. And the fact is that there has never been any reduction whatever in this debt. The fact is that the debt has been paid in full. A pledgeholder can in no circumstances assert that defect in title whereby he may forfeit the title and

collect the moneys also. His authority is limited to foreclosure, and his authority is limited to the use of the collateral for the purpose of protecting payment of the principal obligation. It is an incident to the principal obligation, and the original owner continues to be the owner of the equity and he continues to have a right, a property right, a right to the return of that property when the debt is paid.

And when this debt was paid, in or later than September 1943, when it was paid in full, no longer could a collateral or pledgeholder claim any right in this property. Upon that I am
883 quite certain of my law, may it please the Court, and I am quite certain that one who holds a debt and takes the qualified right of a pledgeholder or collateral holder, acquires by virtue thereof no unqualified title. There remain obligations to the original holders of the property.

The COURT. I agree with everything you say in that regard. My question goes to the legality of the transaction which, as the Government says, absolutely transferred the title. And I was questioning you in this regard:

If they had the right to take it as collateral, to sell it on default, and to buy it in—and no express right is given, I take it, to do that; it is implied and implicit in the general conduct of the Commission, as a function of the Commission—why, then, as a matter of law, would they not have the same authority, implicit in the situation, to take it outright in liquidation of an indebtedness?

I am not questioning whether it was in fact done. I am talking solely about the legal question.

Mr. HARRISON. There is no question in my mind, may it please the Court, that if the Commission had no power to purchase shares of stock in this domestic, private steamship corporation, it had no power to acquire those shares, under the law, by the indirect method of reducing the indebtedness of anyone.

In other words, if I were a debtor of the Government in a given sum, and if the Maritime Commission offered to re-
884 lease me from the whole or any part of that debt, in exchange for shares of stock in a steamship corporation, it is perfectly clear to me that the Commission is purchasing that stock—and if I were the seller, as a cautious man, I would look to the authority. They would have to point out to me the authority under the law whereby they purport to take these shares; for if they had no right to the shares, I probably would have an invalid and unenforceable contract.

In other words, you cannot do by indirection what the law does not permit you to do directly. And if in fact no authority was conferred to acquire title to those shares, then it cannot be ac-

quired by reducing indebtedness in exchange for the acquisition.

The COURT. Let us take a ten-minute recess.

(A brief recess was taken.)

Mr. HARRISON. On the question of authority, may it please the Court, the position of the plaintiffs is that nowhere in the law, certainly nowhere out of the Merchant Marine Act itself—and we assert nowhere in that act—was there conferred upon these defendants the power or authority to do more than to take collateral, to take security, for indebtedness to the United States; and that never was there conferred upon them the power to acquire, either by purchase or otherwise, the title and indefeasible right to possession of shares in stock of the domestic corporation.

885 I think it is not unfair to suggest that the comment in the brief of defendants itself supports such statement of the plaintiffs, for in defendants' brief I note that they attempt to place upon two sections the authority which they assert in this case. They refer to section 207 and point out that it has two parts—first, authority to make contracts and disburse funds to carry on the activities authorized by the statute; second, to make contracts and disburse funds to protect, preserve, or improve the collateral held by the Commission to secure indebtedness.

First addressing ourselves to the earlier portion of that section, I think it is fair in the first place, by way of introduction, to say there is certainly nothing else in the Merchant Marine Act upon which the defendants could possibly place reliance. Certainly no examination of ours has disclosed anything else which could possibly furnish the basis therefor.

In the first part of section 207, it refers solely to the making of contracts and disbursements in connection with the carrying out of activities authorized under the law. And the Commission apparently, according to the memorandum of defendants, claims that in acquiring stock here independent of indebtedness or its payment, that the stock acquisition was incidental to a comprehensive program for rehabilitating, subsidizing, and main-

886 taining the essential services of a shipping company, in furtherance of the congressional policy for fostering and maintaining an adequate domestic merchant marine, in the Merchant Marine Act of 1936.

And again along the same line it is said in the same brief of defendants that the Commission was empowered to acquire title to this stock, independent of the debt or its payment, to use in the program, particularly where the transfer was part of a transaction designed to rehabilitate a shipping company and qualify it for statutory subsidies so as to enable it to perform the functions as part of our merchant marine.

It would indeed, may it please the Court, be an amazing grant of power if the Commission were empowered to make any contract it considered, or to make any disbursement that in its discretion it deemed desirable for these very broad purposes. I think it could be fairly said that at least within the field of shipping there was no limit to the authority of the Commission whatever. But when we look to the Act, we find there is no reference there to any authority of the Commission to carry out any comprehensive programs. There is nothing in the statute which refers to rehabilitating or maintaining essential services of a shipping company; and there is nothing which empowers the Commission or its members to enter into any contract to qualify a shipping company for a subsidy.

Actually, if any of this character of language is to be
887 found at all, it is found in section one; and second one of the Merchant Marine Act is a congressional declaration of policy, a declaration of policy in keeping with which in the remaining sections of the act the Congress itself proceeded to create a commission and to confer upon that commission very definite and specific duties and responsibilities which, in the judgment of the lawmaking power, were designed to further the policy it declared in section one.

Indeed, if section one, a declaration of congressional policy, enabled the Commission to do what it thought best in furtherance of that policy, there would be no need for the remainder of the act, and there would certainly be no need for section 207—because on that theory it was for the Congress to declare the policy and the Commission to do what it wished to further it.

Actually, of course, section 1, a declaration of legislative policy, is in no sense a grant of power, and the power which was conferred upon the Commission is contained in the succeeding sections. And thus we are brought back to section 207, which added in no respect to the power of the Commission. It added in the first part thereof to the activities in which the Commission might engage under the law. It was authorized to make contracts. It was authorized to make disbursements to carry on those activities. But those activities were in no sense or in no respects enlarged,
888 except in one respect; and then we come to the second part of the section, in connection with which it was authorized to make contracts and disbursements, to improve, protect, and preserve collateral held as security for indebtedness.

I must confess, may it please the Court, that I have great difficulty, that I find it impossible to read into a provision of the statute, empowering the Commission to take collateral security, or to improve and protect that security, the power to acquire property itself independent of security or indebtedness.

Obviously, had it been intended to confer such a power, the Congress would not have limited its authority, its grant of power, to property taken in connection with or as collateral. It would have empowered the Commission to purchase or acquire stock in any manner it saw fit, in a domestic, private shipping corporation. It did not do so.

It draws the distinction, the distinction which I made a short time ago, the distinction between the acquisition of property as collateral, or to protect and improve it, and the acquisition of property independent of indebtedness. For the claim of the defendants here is that they acquired that property and that they are holding it, irrespective of the payment of any debt. They are still holding it, although every cent of the debt was paid.

They are not attempting to foreclose. They are not
889 attempting to sell because of nonpayment, and apply the proceeds. They are taking the position that although the debt has long since been paid, although there is no debt to which this property can be an incident, although they have never foreclosed it either for the benefit of the Government, by sale to themselves, the Government, or to anyone else, that having secured payment of the debt, they have an unqualified right to this property, an unqualified right which reaches back to the very beginning of the transfer, and an unqualified right to retain it regardless of any debt at all.

And I submit that that is a claim, not to collateral, not to the rights of a pledgee; that is a claim to the property itself, independent of collateral, independent of debt, and independent of indebtedness.

The Court asked me shortly ago whether it was the position of the plaintiffs in this case that this transaction was prohibited by law. Mr. Hester has called my attention to the fact that I have overlooked section 905 of the Merchant Marine Act, which expressly prohibits the transfer of shares of stock in a steamship corporation, subject to the terms of the act, to a non-citizen. He has also called my attention to the fact that the definition of "citizen" in the act includes the usual—

The COURT. By implication or expressly?

Mr. HARRISON. Expressly, because by definition of the
890 persons who are citizens and by—and when I say "expressly", may it please the Court, I mean there is a definition of what a citizen is, and that it does not include the Government, and therefore the Government is excluded. I am not certain whether that comes under one category or another. However, may it please the Court, as far as I am concerned, I consider it immaterial in this case whether it is an express prohibition or a

complete lack of authority. One or the other, the defendants appear here without authority, and without authority they cannot appear before this Court and claim to be the Government, to be acting as agents of the Government, to be speaking for the Government, either in respect to a claim to the property, to the holding of it, or to the selling of it. And without that authority they stand before you as individuals, and without that authority not only have you jurisdiction, but the plaintiffs have a right to relief.

We believe that the lack of authority is clear. We believe that section 207 cannot be distorted to confer upon the defendants, as officers of the Government, the power to have done more than to have acquired this stock as security for a debt now paid. And that debt having been paid, no authority exists to continue to retain the property; and that therefore they stand before you without warrant in the law, and we stand before you with the right of recovery.

But I wish to point the Court, if I may, to a further
891 ground of jurisdiction independent of that. It is said in the defendants' brief that it is conceded by the plaintiffs that title was acquired here. If that means title independent of the debt, if that means ownership of the property, not as security, but of the property as such, we wish to clarify any such misunderstanding and to make it clear now that our understanding of that contract is nothing of the sort.

Already we have mentioned to the Court our conviction that this contract by its own terms is properly susceptible of one meaning only. It is susceptible of a meaning that the transfer of title free and clear of all liens and incumbrances—incidentally, a transfer without which the pledge would be of little or no value—was a transfer of title which under the contract and within the true intent and meaning of the parties transferred the property as collateral only; and that the terms of that contract, valid as so interpreted and construed, were fully performed, and have disappeared entirely and are not properly before the Court as any basis of defense.

And so I repeat that it is of little moment that opinions and provisions in the contract and in the indorsements of the certificates plainly show that title free and clear of all liens and incumbrances was conveyed to the Maritime Commission. There is no question in that respect. There is no question that the title which the Commission received had no lien or incumbrance upon it and that
892 it was free. But that title so conveyed was a title which under the law could be and was as security only.

The claim has been made that this property might have been acquired upon the ground that there was a release of indebted-

ness. Actually, if you will peruse the contract, you will find the plain statement that not one cent of the debt was taken off, and that the debt remained unreduced after the contract was executed, and that every cent of it with interest has been paid.

Consequently, there could have been no settlement of a debt, either in part or in whole. And, as a matter of fact, if there were a settlement of debt, then under the law it is not within the jurisdiction of the Commission but it is under the jurisdiction of the Treasury Department, under appropriate statutes cited in our brief.

There was no authority in the board to make any other contract. There being no authority in the board to make any other contract, no other contract was made. It existed with validity and vitality only until it had served its legitimate purposes under the law and the statute. And when the debt was paid, since the agents of the Government could acquire no more than the law permitted, they no longer held any interest on behalf of the Government. The law itself is a part of this contract, and all interest of the Government ended because under the law that was
893 all its agents could take when the debt was paid.

The COURT. Let me make certain I clearly understand one statement you made. You said at the time this contract was entered into, no indebtedness was released and no one was released from indebtedness?

Mr. HARRISON. Well, may it please the Court, I don't think I used the last phraseology the Court used. The contract provided only the following terms, I believe, that are material to this case:

First, that 92 percent of the voting control of the company should be transferred to the Commission, free and clear of all liens and incumbrances.

Second, that one corporation and an individual should be released from liability upon certain notes for the purchase of vessels.

Third, that not one cent—and that is not the exact terms—that no part of the debt of the corporation should be considered to be released or paid.

I say now that the full extent of the power of the Commission in taking title was to take it as collateral for that debt. I say that the transaction complied with the law only if it be treated as an exchange of the shares of stock as collateral for the liability of the corporation and the individuals as guarantors or accommodation makers of the ship purchase notes.

894 The contract read in keeping with the law, and with the law as a part of it, simply meant that there was a substitution of all of these shares of stock of various stockholders—92 percent of the voting control—in exchange for the elimination of the liabilities of those secondarily liable on a part of the in-

debtedness, but with no effect whatever upon the debt of the corporation—all of which was paid.

So construed, I say, the contract is valid, and in accordance with the law, and it has been fully performed. And I say that to construe the contract in any other manner would render it invalid to the extent it exceeded the authority. And, as a matter of fact, if it be construed in any other manner, obviously not only was the commitment of the Commission invalid, but the commitment to transfer the stock was invalid. And, as a matter of fact, in that case there was no release of anyone, because the consideration therefor being invalid, the Government would not be bound by the release.

If the Commission had not the authority to make the contract which it did, if the Government therefore did not secure the consideration which was intended, then obviously those who were secondarily liable upon the ship purchase notes were not released and they remained liable until full payment of the debt, notwithstanding the terms of the contract.

In other words, the contract can be treated as valid in its entirety only if it be construed as one within the Commis-
895 sion's power; and one within the Commission's power meant that they could take additional or different collateral; that they did so and in consideration thereof they released those secondarily liable in lieu of the collateral owners.

I say that must be the meaning of the contract, because any other result is unjust, oppressive, and results in the debtor receiving both the security and the debt.

I say that as a matter of fact a long series of subsequent transactions would become doubtful in respect to their validity—definitely questions of law would arise—if this contract be one that must be treated and enforced as a contract made in excess of the statutory power.

I say that all of those results should be avoided by this Court in interpreting this contract, and that it should give to it an equitable, a reasonable, and a proper meaning—a meaning which means that on September 1943, the contract disappeared because of full performance.

I would like, in that connection, to comment briefly upon certain statements in the brief of defendants to the effect that subsidies were dependent in some respect upon these transfers, and that subsequent action of the Commission was based upon this contract, in some respect. I merely ask the Court to read those provisions of the contract and the law, and he will find expressly provided in this contract that the Commission by virtue
896 thereof assumed no obligation with respect to operating-differential subsidies; but, on the contrary, it specifically

provided that it would merely receive applications, make findings under the law, and determine those applications within the meaning of the law. And the law itself specifies what findings must be made, and the purchase of stock in a private corporation is not one of those findings. And the Commission itself, as it well knew, and cautiously protected itself in the contract, could not have agreed to give an operating-differential subsidy in exchange for shares of stock to be transferred to the United States, and it didn't do so.

So that this entire contract reduces itself simply to this question: The debt having been preserved in its entirety, property of the stockholders having been taken in respect to title, certain individuals secondarily liable on the part of the debt having been released, we can interpret and enforce that contract validly and reasonably in one way only, and that is to treat it as a substitution of security and upon repayment of the entire indebtedness it left the defendants with the obligation to return the property—and without any protection, statutory or otherwise under the law, to retain it.

Now, finally, a suggestion is made in the case of defendants that benefits having been received and deliveries having occurred, the rights, if any, of the plaintiffs have been forfeited.

897 In the first place, I fail to see what benefits the plaintiffs have obtained. In this case the Government was avowedly seeking to collect a debt. It bases the right, if any, of the defendants in this case, upon that debt. The defendants were acting under a statute which authorized the Commission to protect and preserve the security for that debt. That debt was the debt of the corporation. That debt has been paid in full.

It was a benefit, no doubt, to all of the parties that that debt be paid and paid in full. But what benefit other than the performance of the obligation of the corporation has occurred? And what benefits have these plaintiffs received? They are divested of their stock, as the matter stands today. They have put up collateral and find themselves in the situation where the debt is paid, and they are unable to procure repossession of their own property.

The answer to it all is that, properly construed, this contract has been fully performed. There is nothing more for anyone to perform, except that the contract obligations having ended by performance, it is the duty of defendants as individuals to return the property to plaintiffs.

Now in respect to delay, there has been no delay whatever. It is the position of the plaintiffs here that the possession of defendants was rightful, as officers of the Government under a legal and valid contract, until the full payment of this debt.

898 And so long as that debt remained unpaid, the plaintiffs had no right of possession; and had they demanded it, it could have been properly refused under the terms of a contract validly made. But when that contract was performed, when the obligations were at an end and the debt paid, then and then for the first time the plaintiffs were entitled to the return of their property—and then they made demand and it was refused.

The COURT. When was the debt paid?

Mr. HARRISON. The debt was paid at some time in or after September 1943. In that respect we are depending upon the allegation in an affidavit, because we have no actual information or access to the records to know when it was paid.

The COURT. When was the demand made for the return of the stock?

Mr. HARRISON. The demand was made in July of this year. And I might say in that connection, may it please the Court, that the first information—although this is not a matter in the complaint—that the first information plaintiffs had concerning settlement of this indebtedness was upon announcements in an affidavit here, the plaintiffs never having been otherwise informed respecting the facts.

In any wise, whatever the date, may it please the Court, I think it is perfectly obvious, that even if we waited a year and a half to make demand for the return of our property, there
899 is no basis for the claim of laches, for there has been no change of position. The contract is performed. The debt is paid. The property is in the possession of the Government. The Government does not allege it has depreciated in value. On the contrary, it claims it has appreciated in value. And if it is our property, the restoration of our property to us cannot result in the performance of anything but a person obligation of the defendants, because they have unlawfully withheld the property of others, and I know of no basis there for applying any doctrine of laches or equitable estoppel.

May it please the Court, I would like briefly to conclude, unless the Court has further questions or Mr. Hester has something he wishes to comment upon, by summarizing the position of the plaintiffs in this case in this manner as we see it:

The plaintiffs rest here upon the ground that there is a cause of action ex delicto for the recovery of personal property from personal defendants. They base that claim upon a proof of ownership and upon facts which show delivery of that property into the possession of defendants under authority of law which long since terminated.

We base the jurisdiction of this Court, in the first place, upon the lack of authority of these defendants, upon their inability to

present to you any statutory power to make the claims or to take the action which they now make and take.

900 We assert that in effect defendants appear before you attempting to stay the jurisdiction and the action of this Court by the simple assertion of authority, by their own personal declaration of agency, but without statuory warrant. We say that in that case, under a line of decisions which has never been questioned and which this Court must overrule to deny jurisdiction, this Court has the power to act—and that by the very fact that that authority is lacking otherwise, the plaintiffs are entitled to relief on the merits.

In the second place, we say that irrespective of that approach to the subject of jurisdiction, that the so-called contract upon which the defendants rely does not and cannot have the meaning which they endeavor to impart to it; that that contract ceased to be, so far as obligations thereunder were concerned, in 1943, leaving the defendants with a naked and unauthorized retention and possession of plaintiffs' property; and that that contract can only properly be interpreted in that manner and legally so interpreted; and upon that ground, also, we assert defendants appear here without any lawful basis for claiming sovereign immunity from suit.

We say that these defendants propose to dispose of this property and disperse it among the public, and that if they do so, the very subject-matter of this suit will disappear from existence, and that the plaintiffs will be left, first, with no remedy against the

901 Government in the Court of Claims or otherwise, and with no remedy in respect to this property which suddenly there seems to be enormous haste to dispose of. We say that if this property is thus dispersed, there will be no remedy for the plaintiffs.

We believe that the Court not only has jurisdiction, but that on the very same basis it has power to act, that it should act favorably to the suitors' complaint on the merits.

It is our belief that there is no real dispute upon the facts. It is our belief that this raises really a question of law.

The plaintiffs are conscious of the desire for an early disposition of this cause and they join in that desire; and they suggest to counsel for the defendants that the parties agree that this hearing may be deemed a hearing upon the merits of the case, and that a final decree, instead of an interlocutory injunction, may be rendered at this time.

The COURT. Mr. Sonnett.

Mr. SONNETT. May I proceed, or does Your Honor desire to recess? I shall not take more than probably twenty minutes.

The COURT. I don't want to limit you at all, but I have such a heavy day tomorrow that I think perhaps we had better go on, if you don't mind.

Mr. SONNETT. If the Court please, my friend, counsel for the plaintiffs, has very skillfully put the cart before the horse, and with even greater skill has then made both the cart
902 and the horse disappear. I make that not facetiously at all; but having made such a thorough study of the case as counsel undoubtedly has made, it is perfectly clear that the initial inquiry which must arise in this case is the inquiry whether or not the Court has jurisdiction of the subject-matter of the suit.

It is also perfectly clear, by an unbroken line of decisions going back to the Lee case on which counsel relies too heavily, and succeeding it, that it is not necessary at all, nor appropriate in determining the issue of jurisdiction, to determine the merits of the case first. Counsel would have this Court decide whether or not there is merit in the suit, and then determine whether or not there is jurisdiction in the Court. That, I submit, is putting the cart before the horse.

As to counsel's remarks concerning the contract, in the two hours of his argument, I have yet to know whether this contract—formally made and entered into in August 1938, with the advice of counsel representing these plaintiffs, who gave his opinion that the transaction was legal and the title to the stock transferred—I am unable now to know whether that contract has disappeared entirely, in counsel's eyes, or whether he would have this Court rewrite the contract, or exactly what should be done to the contract.

But rather than engage in any such activities, I submit we
903 might better confine ourselves to what was in fact done, and intended to be done, by these parties.

The parties in 1938 were represented by very able counsel on both sides. Those parties attempted to and intended to and did everything they could do to make a valid transfer of these certificates of stock to the United States of America, as represented by the Maritime Commission. Ever since that time, up until very recently, the fact that that contract transferred complete legal title to the Maritime Commission was restated. The plaintiffs in this case restated it in their income tax returns, which were, I presume, sworn to and submitted as formal documents to the Government of the United States thereafter. And in those income tax returns they expressly noted that they had transferred all right, title, and interest to this stock to the United States of America.

The opinion of counsel at the time was that the transaction would transfer title. The question of title to the stock appears

to have arisen only after it was determined by these plaintiffs that the stock was worth something, as it is now worth some eight million dollars. And now that the stock has turned out to be worth something in excess of eight million dollars, these plaintiffs would appeal to the court of equity to have this Court say that the eight million dollars which this stock represents should be distributed, not to the taxpayers, but to these individual plaintiffs.

904 Now, the cases, if the Court please, including the Lee case upon which plaintiffs rely, have uniformly held that where property is in the possession of the United States, and where the United States has at least a colorful title to that property, any suit to try that title is against the United States.

The principle was restated I think clearly in the recent Mine Safety Appliances Company case, to which counsel referred. In that case there were allegations, as here, that the acts—indeed, in every one of these cases, I think—the allegations were made that the acts of the individual Government officers were illegal and unauthorized. Otherwise there would be no color of claim against the Government.

There, as here, it was alleged that the action sought to prevent a tort by a Government employee or officer acting as an individual, consisting of a trespass against the appellant's property, and that equitable relief was necessary.

There, as here, the action which the Secretary or the Commission proposed to take was not and is not in violation of any express command of Congress. Indeed, counsel stipulates that fact.

Further, the court there pointed out that the relief sought necessarily involved the rights of the United States and, as the court stated—

905 "Thus, though appellant denies it, the conclusion is inescapable that the suit is essentially one designed to reach money which the Government owns. Under these circumstances the Government is an indispensable party, even though the renegotiation act under which the Secretary proposed to act might be held unconstitutional."

The COURT. I suppose you would agree, would you not, that if this action by the commissioners in acquiring the title to the stock was illegal, then this is not a suit against the United States?

Mr. SONNETT. I would not so agree, if the Court please, for the reason that whether illegal or not, the transaction purported to give absolute title to the United States; that the United States is in possession of the property and has been in possession of the property for some time; and that the claim of the United States is in any event a colorable claim.

Every case cited by us, and indeed I think every case which has dealt with the question of jurisdiction as to such a matter, has not

required that the United States establish as a matter of merit that it has legal title to the property; for if that were necessary, there would be no point in the jurisdictional question at all. Indeed, the cases have all clearly pointed out—before, since, and up to now, with respect to the Lee case—that all that is necessary on the part of the United States is at least a colorable claim.

906 And that colorable claim, and possession of the United States, is enough to defeat, on jurisdictional grounds, a suit such as this.

The Lee case, upon which counsel relies so heavily, was a case where the majority opinion, it being a five-to-four case, quite properly held that the private property of citizens could not be confiscated and that in a suit where private property had been confiscated—as the court said, in its majority opinion—perforce a remedy would lie against the United States. With that the Government has no quarrel.

In the Lee case, the taxes which were due and owing, and by reason of which the Government acquired its tax liens, were taxes which the plaintiff had sought to pay, and in that case the plaintiff having sought to pay through an agent those taxes, the Government officials said they would not accept that payment; that they would require the payment be made in person by the plaintiff.

The court quite properly held that that was an unreasonable attitude and that the plaintiff could properly recover, having tendered payment.

Were this case a case where the contract had been done, as had been proposed back in the early negotiations, to transfer the stock as collateral, and that the Commission would hold it until payment of the debt, and had the debt been paid and the Commission then refused to turn over the stock, we would

907 have a very different case and it may well have been a case in which there would be a remedy at the Court of Claims. But that is not the case here. This case can be made to resemble the Lee case only if other facts are supplied to this case. First, that this were a contract whereby the stock was pledged solely as collateral. Second, that the plaintiffs here came and tendered through an agent—through counsel, perhaps—payment of the debt secured by that collateral; that the Commission said, "No, we will not accept payment through an agent; we must have that payment from the plaintiffs in person." Had the plaintiffs then sued, I would say clearly under the Lee case this Court would have jurisdiction and the Government would have no appropriate defense, as it did not in the Lee case.

It should be noted, further, that even under the facts of the Lee case, if the Court please, the four dissenting justices, despite the taking which was in effect a forcible taking of the plaintiff's

property, the four dissenting justices in that case held it was a suit against the United States and that it wasn't properly maintainable in the courts.

I do not propose, if the Court please, to argue at length the question of whether or not the complaint states a cause of action other than the jurisdictional point.

The COURT. Let me ask you this, Mr. Sonnett: You contend, as I understand your position from your argument
908 before and from your motion, that this was a sale of stock, the consideration for which was release of debt?

Mr. SONNETT. It was an incidental acquisition of title to the stock shares pursuant to a plan for reorganization of a shipping company, which reorganization was essential if the Commission were to carry out its functions.

I submit, if the Court please, further on that question, that if the Court questioned counsel—the answer I don't know yet—if the Commission would have had the power to acquire title to this stock through the foreclosure on a collateral agreement, and then to acquire the title to the stock itself, later, what would the Commission do with the stock so acquired. The stock, in that case, I presume, under the plaintiffs' theory, would have to be given back to the defaulting debtors.

The COURT. I think, Mr. Sonnett, I don't require further argument from you. I have given this case a lot of thought, and I am ready to decide it now. I appreciated Mr. Harrison's argument very much. It does not, however, change the view that I have reached in my study of it. And I may be wrong, but I think two things. One is that this transaction was legal, in the sense that the Commission had the legal right; and therefore I think it is inescapable that this is a suit against the United States and therefore that the complaint must be dismissed and the injunction dissolved.

909 Now, perhaps I shouldn't volunteer this. I haven't the slightest doubt that this case will, and I think it should, go to the Court of Appeals. And I don't think it is reasonable for me to dissolve the injunction, if it does go there. I feel rather certain that the Court of Appeals would entertain favorably an application to advance if there. I don't know that they would, but I assume they would. I think, therefore, that I should continue this restraining order if you—let me ask you; do you intend to appeal this case to the Court of Appeals?

Mr. HARRISON. Yes, Your Honor; with all deference and respect, and intend to apply for a restraining order pending appeal.

The COURT. I assumed you would, and I have given thought to that in anticipation of the fact that you would. What puzzles me

and troubles me at once in that respect is at what amount I should fix the bond, and I would like to hear from you gentlemen on that. But before we get to that, it may be Mr. Sonnett disagrees with me on the question whether I should do it at all.

Mr. SONNETT. I wholly agree with Your Honor's view that if this case is going on appeal and an immediate application is made to the Circuit Court for a stay pending determination, the Government should take no action looking toward disposition of this stock.

910 On the other hand, the stock is now the subject of several bids. The first and third of those bids provide by their terms that they expire on December 31 of this year. I am told the stock of this company, which is traded in on the exchange, has dropped several points within the past several months.

There is a grave question in the mind of the Chairman of the Commission whether or not bids as good as the present bids will be received after the first of the year, bearing in mind that the provisions of the bids are not limited solely to a purchase of the stock by the purchaser, but entail certain other obligations with respect to operation. The Chairman of the Commission, in his informed judgment, if the Court please, is most anxious for a prompt disposition of the matter.

The COURT. I think there should be.

Mr. SONNETT. Should it be possible for an application to be made to the Circuit Court within 24 hours for a stay pending appeal, I would be very glad to participate in the presentation of that to the Court. Should a stay pending appeal be issued, of course, the question of security would have to be resolved by the Court. If Your Honor determines to issue a stay longer than a stay of 24 hours, I should like to be heard upon the question of the amount of security which Your Honor should direct.

Mr. HARRISON. If Your Honor please, I can dispose of
911 counsel's question, if I may, by now formally applying to this Court for a stay pending appeal, which is in the power of this Court to give and which we believe this Court in the exercise of its sound discretion should give now. I am willing to be heard now on the subject of a bond.

The COURT. Do you intend promptly to note and proceed with an appeal?

Mr. HARRISON. We intend to immediately. We are just as anxious to dispose of this matter.

The COURT. What do you mean by "immediately," Mr. Harrison?

Mr. HARRISON. Well, as quickly as Mr. Hester can get the documents prepared for presenting there.

The COURT. My mind is not working in terms of having you run across the street now.

Mr. HARRISON. We will within a very few days attempt to perfect the appeal.

The COURT. I wonder, gentlemen, if you could get together on the bond, at least make an attempt to get together on the amount of the bond.

Mr. SONNETT. Nothing would please me more, if the Court please. But I think it would be demonstrated to be future. In the judgment of the Chairman of the Commission, I think I should ask for security in the amount of $8,000,000. If these bids go through before December 31, 1945, the Government is pro-
912 tected. If they do not, I would not want to be responsible for the results, and I am certain he wouldn't.

The Court. Mr. Harrison,

The COURT. Mr. Harrison, in that regard, this stock pending the appeal is either going to go up or go down. There is some possibility, also, it will remain at its present value. But the probabilities are, I suppose, it would either go up or go down. This bond should protect the Government, which claims to own it, against the eventuality that it may go down. Have you any ideas as to what is a reasonable protection?

Mr. HARRISON. I might say this, may it please the Court. I do not understand that the issue in this case, involving as it does the title to personal property, can properly place the plaintiffs in the position of speculating on the future value of this stock.

The COURT. But haven't I got to speculate on it?

Mr. HARRISON. I think not, Your Honor, if I may be heard on that. The subject-matter of this suit is the shares of stock. I believe Your Honor, in view of his restraining order to date, and in view of his comments today, indicates this is by no means a frivolous suit.

The COURT. I don't think for a moment that it is.

Mr. HARRISON. That being the case, may it please the Court, the only effect of disposing of this property at once and dis-
913 persing it is to deprive this Court of the subject-matter now under its jurisdiction. The status quo is preserved by retention of these shares.

The indications we have received from the Commission to date are that this stock has never depreciated but has appreciated in market value. We know of no sudden reason why this property must be sold in a few days. And the public press carries reports the bidders for this stock are not only prepared to extend the same but increase their bids at this time.

The COURT. Do you have that in your hand?

Mr. HARRISON. Yes, sir [handing up clipping]. This is the Pacific Shipper, a publication of the shipping industry on the West Coast, may it please the Court.

The COURT. Have you anything to say about that, Mr. Sonnett? Do you know anything about it?

Mr. SONNETT. I do not, sir; and I have only this to say, that no matter what is in the public press, I must necessarily rely on what I am told by the Chairman of the Maritime Commission.

Mr. HARRISON. May I say it is not so much the question of amount, which I have not yet suggested to Your Honor, that is my concern at the moment; but it is my concern that Your Honor has suggested what would be a form of bond which would have to guarantee the price the Commission might get for the subject-matter in its own control, in the future.

914 The COURT. I don't know that I follow you there. Let me put it in a different way. If you lose this suit, the bond should protect the Government against any loss that it may have suffered by virtue of your bringing the suit. Isn't that correct?

Mr. HARRISON. I think not, Your Honor. I think this property, which is the subject of controversy, we are entitled to have preserved in status quo until the determination of the suit.

The COURT. Yes.

Mr. HARRISON. This property is within the sole and exclusive control of the Maritime Commission. Through this stock it exclusively controls the corporation and its business activities.

The COURT. Now it wants to sell the stock; and through me, at your request, or by virtue of my action at your request, it can't do it.

Mr. HARRISON. That is correct, sir.

The COURT. If it should develop that the higher courts hold I am right and you are wrong, it can be that in the meanwhile the delay will have caused loss, in that the stock will have less value than it has now. Isn't it against that eventuality——

Mr. HARRISON (interposing). No.

The COURT. A bond on the restraining order is designed to protect?

915 Mr. HARRISON. I think not, Your Honor. I think the decisions would hold otherwise, and we would like to submit them. And I would like to point out, what would happen to the profit if it appreciated? Are we entitled to the profit? If we are to guarantee against loss, then the transaction is one for our profit, and we are entitled to earn a profit or a loss, as the case may be.

The COURT. No, no.

Mr. HARRISON. Then may I say, with all respect, that when we appear before this Court, with probable cause for pursuing our property in the hands of the Commission, to say we must in effect make a market guarantee, based upon alleged offers existing at the present time, is to compel us to speculate in this litigation.

The COURT. Exactly. There is no doubt that that. That is always true in the case of a bond on injunction. You have to speculate, haven't you?

Mr. HARRISON. No, I think not. I know of no bond on injunction——

The COURT (interposing). What value is the bond, then? What value to the Government would a bond have if it weren't based on some estimate of possible loss?

Mr. HARRISON. But not of market loss, may it please the Court.

The COURT. How else would you arrive at it?

916 Mr. HARRISON. All of the costs of the Government in connection with the suit.

The COURT. You mean it shouldn't go beyond the costs of the suit?

Mr. HARRISON. I think that is correct, Your Honor. I can't conceive of any other possible damage that could occur, other than costs.

The COURT. They say today, "This is my property. I want to sell it. I can get $8,000,000 for it." You won't let them sell it, and they say, speaking to me, "At the request of Mr. Harrison, you won't let me sell it."

And I say, "That is correct." A year from now, or six months from now, the Court of Appeals and the Supreme Court of the United States each has said, "Mr. Harrison, you were wrong, and the Judge was right."

The Maritime Commission then is permitted by this Court to sell the stock. But the stock isn't worth $8,000,000 any more; it is worth seven, six, or five million, or whatever it is. Isn't that the loss?

Mr. HARRISON. I think not, Your Honor. In the meantime the respondents in this proceeding have had the possession, enjoyment, and use of the property throughout. They have not been deprived of whatever gain may be secured from holding it throughout. Obviously, if we are to guarantee the market price

of today, then we are entitled to be placed in the
917 position of owner, and not the respondents in this case.

All that you are requested to do here is to say that this property, the title to which is in dispute, shall be held without impairing the cause of action of the plaintiffs pending a final determination of the suit. And I submit, under the authorities, it is not the obligation of the suitor, who has presented probably

cause for this suit, to be compelled to guarantee an alleged market as of a given day.

The COURT. I don't know that it goes that far. But I would be very much surprised to learn that the law is as you say.

Mr. HARRISON. May we have an opportunity to present authorities to Your Honor?

The COURT. Yes, you may; but you will have to do it reasonably promptly.

Mr. HARRISON. Yes; we will do it at once.

Mr. SONNETT. If the Court please, may I say just one further thing I have not yet said, with respect to the danger to the Government of the diminution of the value of this stock? I am told it is in the interest of the Government of the United States as quickly as possible to develop and to expand our trade routes into the Pacific, in the wake of the conquest of the Japanese. I am told that is the policy with which the Government is very much concerned. I am told the disposition of this stock
918 now to operators who would be competent to operate the ships and expand those routes would be in the national interest.

To tie up this stock for six months or a year, even with security in the amount of eight million dollars, or whatever the exact amount of the high bid is, will not secure the United States in any way against injury to its national interest arising from whatever delay occurs in the expansion of these routes. But all I can do is report to Your Honor the views of the Chairman of the Maritime Commission.

Mr. HARRISON. I would like to say in response to that, may it please the Court, that the Maritime Commission has carried on these functions for seven years; that the Maritime Commission has made no public declaration nor, so far as I know, any declaration to any shipping company that it is prepared to proceed with any plan of private operation of the ships, and I think the public is entitled to the information as well as the Court, if there is any such plan afoot.

The COURT. Well, perhaps I should continue it as it is and let the Court of Appeals decide what the bond is to be.

Mr. HARRISON. We would like to submit that to the Court with our authorities, as we will do tomorrow.

The COURT. Very well. As to the matter of a bond, I haven't the slightest idea at this moment as to what it ought to be. All right, gentlemen.

Mr. SONNETT. And in the meantime, I understand the sus-
919 pension is continued under the same conditions?

The COURT. Yes.

Mr. SONNETT. Until what time tomorrow, Your Honor?

The COURT. I don't know just what time. I shall probably have to be in court all day tomorrow.

Mr. SONNETT. I think we ought to be able to fix a time, if the Court please, because we don't think we should wait further at counsel's convenience. Moreover, I would like to go away tomorrow afternoon, and I would like to get this disposed of, if it is possible, tomorrow.

Mr. HARRISON. We want to cooperate and get it done at once, but there are a mass of things to be done if this is to be disposed of by two o'clock tomorrow.

The COURT. It won't be disposed of by two o'clock tomorrow, but we certainly ought to be able to agree upon a form of order and the amount of bond by two o'clock tomorrow, or some time during tomorrow afternoon. I don't see any reason for further delay on that. I don't think that is a serious problem, except as to what the amount should be.

Mr. HARRISON. Yes, Your Honor. We will be prepared to take it up within that time.

Mr. SONNETT. Could we have a time, if the Court please? I hate to press this, but I would like to know what time we can get together on it.

The COURT. I will have a hundred people in here
920 tomorrow morning, and if we are going to have to take further time to discuss it, I don't think they ought to sit around and wait. I would rather not have it tomorrow morning at all. I would rather make it in the afternoon. Perhaps two o'clock would suit me very well. Is that agreeable?

Mr. SONNETT. That is entirely agreeable.

Mr. HARRISON. Yes, that is agreeable.

The COURT. Very well.

(Whereupon, at 4:55 p. m., an adjournment was taken until 2 o'clock the following afternoon, Friday, December 21, 1945.)

REPORTER'S CERTIFICATE

The foregoing record is certified by the undersigned court reporter for the District Court of the United States for the District of Columbia to be a true copy of the official transcript of proceedings taken by him.

THOMAS O'NEAL.

I hereby certify this is a true copy of the original on file in the District Court.

JOHN F. SONNETT, *Asst. Atty. Gen.*

923 In the District Court of the United States for the District of Columbia

Civil Action File No. 31468

R. STANLEY DOLLAR, ET AL., PLAINTIFFS

v.

EMORY S. LAND, ET AL., DEFENDANTS

Appellants Designation of Contents of Record on Appeal Pursuant to Rule 75

Filed Jan. 7, 1946

Appellants R. Stanley Dollar, Dollar Steamship Line—a California corporation, J. Harold Dollar Estates Co.—a California corporation, and H. M. Lorber—an individual, hereby designate the following portions of the record and proceedings to be contained in the record on appeal in this action.

1. Complaint.
2. Order, judgment and decree corrected pursuant to Rule 60-A of the Rules of Civil Procedure, entered herein as of December 21, 1945.
3. Notice of appeal filed herein on December 26, 1945.
4. Appeal bond.
5. Statement of points on which appellants intend to rely on the appeal, filed herewith.
6. This designation.

Clinton M. Hester,
CLINTON M. HESTER,
432 Shoreham Building, Washington, D. C.,
Attorney for Appellants.

Dated January 7, 1946.

924 In the District Court of the United States for the District of Columbia

Civil Actiton No. 81,468

R. STANLEY DOLLAR, ET AL., PLAINTIFFS

vs.

EMORY S. LAND, ET AL., DEFENDANTS

Appellees' Counter-Designation of Contents of Record on Appeal Pursuant to Rule 75 of the Federal Rules of Civil Procedure

Filed Jan. 12, 1946

Appellees hereby designate the following portions of the record and proceedings, in addition to those designated by appellants, to be contained in the record on appeal in this action:

1. The affidavit of Emory S. Land (consisting of 13 pages), sworn to on November 13, 1945 together with the Exhibits annexed thereto.
2. The affidavit of Emory S. Land (consisting of 1 page), sworn to on November 13, 1945.
3. The affidavit of A. J. Williams, sworn to on November 14, 1945.
4. The affidavit of John F. Sonnett, sworn to on November 26, 1945 together with the Exhibits annexed thereto.
5. The order granting injunction pending appeal, dated December 26, 1945.
6. The transcript of hearing held on November 15, 1945.
7. The transcript of hearing held on December 20, 1945.

925 8. The transcript of hearing held on December 21, 1945 [already on file in Court of Appeals.]

9. This counter-designation.

John F. Sonnett,
JOHN F. SONNETT,
Assistant Attorney General.

EDWARD M. CURRAN,
United States Attorney,
Attorneys for appellees.

Dated January 12, 1946.
Copy received Jan. 12, 1946.

CLINTON M. HESTER,
By M. M. KEARNEY.

926

District Court of the United States
For the District of Columbia

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Charles E. Stewart, Clerk of the District Court of the United States for the District of Columbia, hereby certify the foregoing pages numbered 1 to 36, both inclusive, 693 to 769, both inclusive, and 921 to 925, both inclusive, to be a true and correct transcript of the record according to designations of record by counsel filed and made a part of this transcript, and in accordance with Rule 75 (g) of the Federal Rules Civil Procedure for the District Courts of the United States, in action entitled R. Stanley Dollar (an individual), et al., Plaintiffs vs. Emory S. Land (Chairman, United States Maritime Commission), et al., Defendants, Civil Action No. 31468, as the same remains upon the files and of record in said Court, except the following:

The original Exhibits A-1 and A-2, pages numbered 37 to 692, both inclusive, are included herein pursuant to order of this Court filed January 14, 1946.

The transcript of proceedings, pages numbered 770 to 920, both inclusive, as to the accuracy of which counsel has certified, is included herein.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 29th day of January, 1946.

[SEAL]

CHARLES E. STEWART,
Clerk.

By HARRY M. HULL,
Deputy Clerk.

928 In United States Court of Appeals
For the District of Columbia

Before Honorable BENNETT CHAMP CLARK, WILBUR K. MILLER, and E. BARRETT PRETTYMAN, Associate Justices

No. 9168—January Term, 1946

R. STANLEY DOLLAR, AN INDIVIDUAL, ET AL., APPELLANTS

vs.

EMORY S. LAND, CHAIRMAN, UNITED STATES MARITIME COMMISSION, ET AL., APPELLEES

Minute entry of argument

Jan. 19, 1946

On motion of Mr. C. M. Hester, Mr. Gregory A. Harrison of the Bar of the Supreme Court of California was permitted to argue for appellants pro hac vice by special leave of Court.

On motion of Mr. Harry I. Rand, Mr. John F. Sonnett of the Bar of the Court of Appeals of New York was permitted argue for appellees pro hac vice by special leave of Court.

Argument commenced by Mr. Gregory A. Harrison, attorney for appellants, continued by Mr. John F. Sonnett, attorney for appellees, and concluded by Mr. Gregory A. Harrison. Appellants allowed to file supplemental brief and authorities.

929 United States Court of Appeals, District of Columbia

No. 9168

R. STANLEY DOLLAR, AN INDIVIDUAL, ET AL., APPELLANTS

v.

EMORY S. LAND, CHAIRMAN, UNITED STATES MARITIME COMMISSION, ET AL., APPELLEES

Appeal from the District Court of the United States for the District of Columbia

Argued January 19, 1946.—Decided March 18, 1946

Mr. Gregory A. Harrison of the Bar of the Supreme Court of California, pro hac vice, by special leave of Court, with whom Mr. Clinton M. Hester was on the brief, for appellants.

Assistant Attorney General Sonnett of the Bar of the Court of Appeals of New York, pro hac vice, by special leave of Court, with

whom Messrs. Edward M. Curran, United States Attorney, Paul D. Page, Jr., Solicitor, United States Maritime Commission, and Ellis Lyons and Harry I. Rand, Attorneys, Department of Justice, were on the brief, for appellees.

Before CLARK, WILBUR K. MILLER and PRETTYMAN, JJ.

Opinion

Filed March 18, 1946

CLARK, J.: This action originated with a complaint filed by the present appellants in the District Court on November 6, 1945. The complaint prayed for relief by way of injunction and mandamus against the defendants, members of the United States Martime Commission, as individuals. It was alleged that the defendants were about to sell certain stock held by them in derogation of the plaintiffs' asserted legal right to the securities.

Upon the filing of the complaint a temporary restraining order was granted against the defendants. The plaintiffs moved for a preliminary injunction, pending suit, and it was in response to this motion that the defendants, appellees here, came forward, submitting brief, affidavits and arguments embracing these defenses: (1) that the suit was in fact one against the United States without its consent, and therefore, the court was precluded from entertaining it; (2) that the complaint failed to state a cause of action because under a contractual agreement entered into in 1938 the stock in question was unconditionally and absolutely 930 transferred to the United States. Further, it was asserted that the plaintiffs because of their conduct, both at the time of contracting and subsequently, are not now free to challenge the validity of the contract.

Defendants, however, did not answer or move for a dismissal or summary judgment. The proceedings below went only to the motion for a preliminary injunction. After twice hearing the parties the District Court dismissed the complaint on its own motion and denied the temporary injunction. It appears from the briefs filed in this court that the parties, during the course of their argument on the plaintiffs' motion for a preliminary injunction, may have placed before the lower court most, if not all, of the substantive elements necessary to a decision on the merits. However, with only the aid of the record now before this court we are not free to review the case on the merits.

The controlling fact at this stage of the litigation is that the complaint was dismissed below. Some assistance in determining

the basis for the dismissal is found in the order itself and in this portion of the transcript from the lower court:

"I have given this case a lot of thought, and I am ready to decide it now. I appreciate Mr. Harrison's argument very much. It does not, however, change the view that I have reached in my study of it. And I may be wrong, but I think two things. One is that this transaction was legal, in the sense that the Commission had the legal right; and therefore I think it is inescapable that this is a suit against the United States and therefore that the complaint must be dismissed and the injunction dissolved."[1]

The order of dismissal indicates that the court had considered all of the offerings on both sides, and the transcript of record bears out the appellees' contention that appellants, plaintiffs below, regarded the proceeding as pointing toward a final determination on the merits. Counsel for the plaintiffs said:

"It is our belief that there is no real dispute upon the facts. It is our belief that this raises really a question of law.

"The plaintiffs are conscious of the desire for an early disposition of this cause and they join in that desire; and they suggest to counsel for the defendants that the parties agree that this hearing may be deemed a hearing upon the merits of the case, and that a final decree, instead of an interlocutory injunction, may be rendered at this time."[2]

Nevertheless, regardless of the light in which the parties, and perhaps the lower court, may have viewed this litigation, we are unable to say that the record on this appeal gives us license to review the complex and important substantive issues involved. We are constrained by the nature of the District Court order. The ground for the dismissal was jurisdictional, that is, the suit was deemed to be one against the United States without its consent and therefore not maintainable.

The complaint having been dismissed on the court's motion, the question for our decision is whether the allegations
931 found therein, when taken as true, constitute ground for relief under any set of facts that could be proved to support the claims. This question must be answered not only by looking to the complaint itself, but also by reviewing the doctrine of sovereign immunity which appears to have controlled the decision below.

Turning to the complaint, we find these illustrative allegations:

"23. That accordingly acting under the intimidation and threat of bankruptcy and the inability to meet its obligations, including obligations to the United States itself, the company was involun-

[1] Transcript of record, p. 137.
[2] Id., p. 130.

tarily forced to and did enter into said contract of August 15, 1938, a full, true and correct copy of which is annexed hereto * * *

"29. That, although such transfer was in fact and in legal effect collateral security for the indebtedness of the company to the United States Maritime Commission, nevertheless after the satisfaction of all of said debts and obligations to the United States, the defendants have asserted and claimed, and do now assert and claim that the United States is the lawful owners of the shares of stock so transferred by the plaintiffs to the United States Maritime Commission.

"30. That, the indebtedness of the company to the United States for which said shares were transferred as collateral security, amounted to approximately $7,500,000 in principal amount, all of said amount having been fully satisfied and accordingly the indebtedness for which the stock has been transferred as collateral no longer exists.

"31. That, the contract between the plaintiffs and the United States Maritime Commission was unauthorized and prohibited by express provisions of the Merchant Marine Act of 1936, as amended.

"32. That, said contracts therefore are unenforceable, that no legal rights of either party could be effected under said contracts, that said contracts are void for all purposes and effects, and that the United States Maritime Commission could not acquire legal title to the plaintiffs' stock pursuant to the terms of the illegal agreements."

Considering these allegations for the moment without regard to the question of sovereign immunity, we think they state a "claim" which, if proved, entitled the plaintiffs to relief. Whether the motion to dismiss be initiated by the defendant or by the court, it can stand "only where it is clear and apparent to the court that the plaintiff would not be entitled to relief under any state of facts which could be proved in support of the specific claim."[3]

Viewing the complaint in the light of the argument before this court and the exhibits attached to the briefs presented here, the fundamental issue is drawn into sharp focus. Appellants contend that the 1938 contract represented nothing more than a pledge of the stock. This position is founded on two arguments: (1) the Commission was without authority to acquire absolute and unqualified title to the securities, and (2) the terms of the contract, and the circumstances under which it was entered into, require the court to interpret it as a security transaction. The
932 debt originally owing the Commission has now been paid. Hence, if appellants' contention be correct the

[3] Takir Erk v. Glenn L. Martin Co., 116 F. 2d 865, 870.

United States now has no interest in the collateral. As appellants argue, the terms of the contract seem in some respects to be more consonant with the theory of pledge than that of outright transfer. For example, it was specifically provided that appellees should acquire some 90% of the voting control of the company and have the power to sell the securities acquired. Neither of these conditions would appear necessary if the transfer was intended to be absolute. Further, some of the language used in the Commission's press release of July 6, 1943, tends to illustrate the genuineness of the "claim" which appellants are asserting. In announcing that it was considering the "possibility of bringing about private ownership of the American President Lines" the Commission's release said: "Some of the debts of the Company were covered by debentures and preferred stock, and the Maritime Commission, *to protect its interests* and insure continuation of service, *came into possession* of 80 per cent of the common stock. Although the Commission had full voting control, it caused the Company to be operated by a Board of Directors which included representative local interests of San Francisco and former creditors of the concern." [Italics added.] It would thus appear that perhaps the "possession" acquired by the Commission to protect its "interests" was, as appellants urge, nothing more than a bargain by which there was a substitution of collateral resulting in strengthening the Commission's position by reason of the management control inextricably bound to the transferred stock. We have no finding or conclusion from the trial court on this basic issue which we believe must be tried.

The appellees point out that the complaint is inconsistent on its face, that is, the plaintiffs argue first that the contract is without authority in law and therefore void, and second that it is a valid contract and as such can only represent a pledge of the securities in question. It is true that in the final analysis these claims cannot stand together. In terms of any ultimate relief they occupy an "either or" relationship to each other, but at this point they are only alternative claims.[4] The tests of clarity and simplicity have been met.[5]

Of the many legal problems attendant upon the relationship of government to the citizenry probably none have been more perplexing or stubbornly resistant to precise solution than those arising under the doctrine of sovereign immunity. We will not here attempt an exhaustive review of the authorities, many of which were ably argued before us in the present litigation. They illus-

[4] Rule 8 (e) (2), F. R. C. P., 28 U. S. C. A. foll. § 723 (c).
[5] See Cohen v. Randall, 137 F. 2d 441. Cf. Catanzaritti et al. v. Blanco, 25 F. Supp. 457.

trate the great difficulty that courts have had in applying the oft-stated principle of immunity and point up the absence
933 of any controlling formula.[3] For purposes of our decision we think it sufficient to set down: (1) an analysis of the doctrine as a preliminary or "jurisdictional" problem, and (2) an indication of the long standing policy in applying the principle to situations where the governmental undertaking is commercial and corporate in character.

As to point (1) we are adopting the jurisdictional analysis made by Justice Stephens of this Court in his opinion (dissenting in part, concurring in part) in Franklin Tp. in Somerset County, N. J. v. Tugwell, 85 F. (2d) 208, 229. Citing several cases[4] relied upon by the parties in the present litigation, he points out:

"Where a plaintiff asserts that an officer of the Government is acting without power and that therefore his acts are invalid, the court in determining the preliminary jurisdictional question whether the United States is a necessary party (whether necessary parties are before a court is, of course, jurisdictional), is confronted with a peculiar procedural problem, or impasse, arising out of the fact that the determination of this question involves passing upon the very question involved in the merits. * * * Since a court must determine at the outset its jurisdiction to proceed, it is compelled to make a preliminary decision for jurisdictional purposes on the ultimate question in the suit, and this notwithstanding the fact that when the merits are heard, it may be compelled to reach an opposite conclusion. The courts solve this problem by accepting at their face value, for jurisdictional purposes, the assertions of the complainant of want of power in the officers—unless such assertions are 'so unsubstantial and frivolous as to afford no basis for jurisdiction * * *'." Citing *Northern*

[3] The line of cases relied upon by appellants stems from United States v. Lee 106 U. S. 196, where the federal officers were denied immunity from suit. It is true, as the appellees have urged before this court, that in the Lee case the government officers came into possession of the property in question by "force and violence," that the case was an action in ejectment and materially stronger on the question of authority in the officers to do what they did. These distinctions, however, are matters of degree. If it should be found upon the trial of the present case that the defendants acted without authority in the first instance, or have by subsequent conduct overreached their statutory authority, their position becomes the same as that of the officials in the Lee case. (See also: Lane v. Watts, 234 U. S. 525, 540, and Philadelphia Co. v. Stimson, 223 U. S. 605, 619, 620.) The appellees contend that it is really the interest of the United States that the appellants seek to attack, but we think that as a prerequisite to a showing that the interest of the United States had been invaded, the government's interest must first be established. The physical fact of holding property, if bottomed on nothing more substantial than an act by an officer which may, upon trial, be found to be ultra vires, does not make out a prima facie case of government ownership, or right to claim the property. We may concede that the Maritime Commission functions only as an agency of the United States, but "the government does not become a conduit of its immunity in suits against its agents or instrumentalities merely because they do its work." Keifer v. Reconstruction Finance Corporation, 306 U. S. 381.

[4] Payne v. Central Pac. Ry. Co., 255 U. S. 228; Northern Pac. Ry. Co. v. North Dakota, 250 U. S. 135; Wells v. Roper, 246 U. S. 335; Lane v. Watts, 234 U. S. 525; United States v. Lee, 106 U. S. 196; Transcontinental & Western Air v. Farley, 71 F. 2d 288, certiorari denied, 293 U. S. 603.

Pac. Ry. Co. v. *North Dakota*, 230 U. S. 135, 39 S. Ct. 502, 63 L. Ed. 897.

In Correa v. Barbour, 71 F. (2d) 9, 12, the court, faced with this question of jurisdiction, discusses and quotes from United States v. Lee, 106 U. S. 196, and then points out that while the "defendant claims that he has the right and authority * * * this is an immaterial allegation and in any event is not an assertion that he has such right and authority. *If he has such right and authority, that is a matter of defense for him to plead in the action, which as yet, he has not done.* [Italics added.] The danger that citizens 934 may be deprived of a hearing on their rights through the mere "claim" of authority on the part of a governmental officer who may have tortiously invaded private rights, seems to us to outweigh the possibility that the sovereign's immunity will be placed in jeopardy through the court's accepting jurisdiction of a cause of this sort.

While it does not alter the basic problem under consideration we observe another facet of the jurisdictional question which buttresses our conclusion to reject the defendant's claim of immunity at this time. The statute upon which the defendants rely as the fountain head of their authority for entering into the contract that is now challenged reads in part as follows:[8]

"The Commission may enter into such contracts, upon behalf of the United States, and may make such disbursements as may, in its discretion, be necessary to carry on the activities authorized by this chapter, or to protect, preserve, or improve the collateral held by the Commission to secure indebtedness, *in the same manner that a private corporation may contract* within the scope of the authority conferred by its charter." [Italics added.]

We are in agreement with the view taken of this section of the law by the court deciding Standard Oil Co. of California v. United States, 59 F. Supp. 100, involving the Maritime Commission. There the provision was treated in the same fashion as those statutes creating corporate instrumentalities for the conduct of public business. While the corporate acts characteristically carry language to the effect that the corporation may "sue and be sued,"[9] we think the comparison is well drawn. It is in harmony with the views of administrative officials having occasion to consider that section of the law involved in this litigation. For example, though not deciding the extent of contractual freedom conferred upon the Maritime Commission by Section 207 the Attorney Gen-

[8] Act of June 29, 1936, c. 858, Title II, § 207, 49 Stat. 1988; amended June 23, 1938, c. 600, § 2, 52 Stat. 954; 46 U. S. C. A., § 1117.

[9] See legislation creating Federal Home Loan Bank, 47 Stat. 725, 735; Tennessee Valley Authority, 48 Stat. 58, 60; Home Owners' Loan Corporation, 48 Stat. 128, 129; Federal Deposit Insurance Corporation, 48 Stat. 162, 172.

eral has stated "that section 207 was intended to confer 'all general and implied powers of a business corporation' (H. Rept. No. 2168, 75th Cong., 3rd Sess.) and that it has been construed to authorize departures from the usual rules governing the making of Government contracts when the unusual or business character of the activities involved so require (Comptroller General's Decisions, A-51647, March, 1941, and B-15611, January 12, 1942)."[10]

Thus, the Maritime Commission seems to stand in much the same relationship to those with whom it contracts under section 207 as do the more formal corporate organizations charged with transacting the government's business. Do the benefits of freedom of action which the Commission enjoys under this section carry with them commensurate burdens of liability as in the case of an agency with formal corporate status?

Courts have long recognized the difference between the more customary governmental activities and those carried on by
935 the government through the commercial device of a corporate organization.[11] Immunity from suit is of course given up when the language of the organic statute specifically waives it. The waiver of immunity is no less effective where the corporation is created by the Congress through an authorization to the President. Sloan Shipyards v. U. S. Fleet Corporation, 258 U. S. 549. Further, even in the absence of explicit statutory authority a government corporation was brought into court as early as 1898. Smithsonian Institute v. Meech, 169 U. S. 398.

Whether governmental immunity automatically attaches to a government corporation was considered in Keifer v. R. F. C., 306 U. S. 381, 389, where the Court said:

"For more than a hundred years corporations have been used as agencies for doing work of the government. Congress may create them 'as appropriate means of executing the powers of government. * * *' *But this would not confer on such corporations legal immunity even if the conventional to sue-and-be-sued clause were omitted.* * * * Congress may, of course, endow a governmental corporation with the government's immunity. But always the question is: has it done so?" [Italics added.]

Recent cases express a clear policy toward restricting the use of the immunity shield. In Brady v. Roosevelt S. S. Co., 317 U. S. 575, the Court quotes with approval from the Sloan Shipyards

[10] 40 Op. A. G. No. 68, March 23, 1943.

[11] In Bank of the United States v. Planters' Bank of Georgia, 9 Wheat. 904, it was said: "It is, we think, a sound principle, that when a government becomes a partner in any trading company, it divests itself, so far as concerns the transactions of that company, of its sovereign character, and takes that of a private citizen. Instead of communicating to the company its privileges and prerogatives, it descends to a level with those with whom it associates itself and takes the character which belongs to its associates and to the business which is to be tranacted."

case, supra, on the matter of the liability of a government corporation, officer and then says, "* * * when it comes to the utilization of corporate facilities * * * in the broadening phases of federal activities in the commercial or business field, immunity from suit is not favored." (Citing: Keifer v. Reconstruction Finance Corp., 306 U. S. 381; Federal Housing Administration v. Burr, 309 U. S. 242.) We think it a logical and necessary continuance of this policy to apply it to the present case, where the language of the statute, as well as the strongly asserted interpretation placed on it by the Commission, authorize contracts "as a private corporation."

Counsel for appellees has asked us to consider as a part of the record on this appeal certain affidavits which were submitted to the lower court during the argument on appellant's motion for a preliminary injunction. We do not believe that the present posture of this case is such as to warrant our accepting these affidavits. To do so would be to infringe upon the lower court's prerogative to decide the case on the merits. As we said in Farrall v. D. C. Amateur Athletic Union, No. 9084, decided February 25, 1946:

"There is a great difference between discovering whether there be an issue of fact and deciding such an issue. The affidavit can be used for the former purpose but not for the latter. Thus, if a fact be averred in the complaint and contradicted in the affidavit, the latter version cannot be accepted by the court for the purposes of a motion to dismiss."

In our opinion, the affidavits, as well as much of the argument before this court, raise controversial questions of law and fact proper for presentation to a trial court.[12]

We should like to make it quite clear that in reversing and remanding this case for further proceedings in the court below we are not holding that the appellants' allegations will stand against well pleaded and proved defenses. The holding is only that the District Court erred in dismissing the complaint on jurisdictional grounds. We have not attempted to weigh conflicting factual claims or draw conclusions of law which might favor either of the parties at the hearing on the merits.

Reversed and remanded.

[12] See Kohler et al. v. Jacobs et al., 138 F. 2d 449, 411

937 In the United States Court of Appeals for the District of Columbia

[Title omitted.]

Designation of record

Filed May 2, 1946

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for writ of certiorari in the above-entitled cause, and include therein the following:

1. Entire record filed in this Court.
2. Minute entry of argument.
3. Opinion.
4. Judgment.
5. This designation.
6. Clerk's certificate.

J. HOWARD MCGRATH,
Solicitor General.

Receipt of copy hereof this—day of May is hereby acknowledged.

CLINTON M. HESTER,
By MICHAEL M. KEARNEY.

938 In United States Court of Appeals for the District of Columbia

No. 9168—January Term, 1946

R. STANLEY DOLLAR ET AL., APPELLANTS

vs.

EMORY S. LAND ET AL., APPELLEES

Appeal from the District Court of the United States for the District of Columbia.

Before CLARK, WILBUR K. MILLER, and PRETTYMAN, JJ.

Judgment

Filed March 18, 1946

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the order of the said District Court appealed from in this cause be, and the same is hereby, reversed and that this cause be, and it is hereby, remanded to the said District Court for further proceedings not inconsistent with the opinion of this Court.

Per Mr. Justice CLARK.

Dated March 18, 1946.

939 In United States Court of Appeals for the District of Columbia

[Title omitted.]

Order

Filed May 10, 1946

On consideration of appellees' motion to authorize Clerk to use original transcript of record in the above-entitled cause in preparing certified record to the Supreme Court for use in connection with petition for review on writ of certiorari, It is

Ordered by the Court that the motion be, and it is hereby, granted.

PER CURIAM.

Dated May 10, 1946.

940 [Clerk's certificate to foregoing transcript omitted in printing.]

941 In the Supreme Court of the United States

Stipulation as to printing of record

Filed June 17, 1946

Whereas, R. Stanley Dollar, Dollar Steamship Line, the J. Harold Dollar Estates Company and H. M. Lorber, hereafter called the Appellants, heretofore appealed to the United States Court of Appeals for the District of Columbia from a judgment of the District Court of the United States for the District of Columbia, dismissing their complaint against Emory S. Land, Howard L. Vickery, Edward Macauley, John M. Carmody, and Raymond S. McKeough and said Court of Appeals reversed the judgment, and the appellees on said appeal now propose to petition for writ of certiorari and are hereafter referred to as the petitioners; and,

Whereas, in taking said appeal the appellants designated as the record on appeal only the complaint, the order, judgment and

decree appealed from, the notice of appeal, the appeal bond, the statement of points on which appellant intended to rely on the appeal, and the designation of said documents; and

Whereas, the petitioners by counter-designation of record caused to be sent up to said United States Court of Appeals for the District of Columbia, certain additional papers, including those listed below; and

942 Whereas, the appellants have denied that any of said additional papers is part of the record on appeal herein or may be referred to in deciding the issues of said appeal, but do not desire to cause unnecessary printing and expense so long as they do not prejudice their own rights.

Now, therefore, it is stipulated, subject to this court's approval, and without prejudice to the contentions of the parties, by and between the attorneys for the respective parties hereto, for the purposes of said petition for writ of certiorari, that the following documents which physically appear in the certified transcript of record need not be printed and if sent up to this court in unprinted form may be referred to with exactly the same force and effect as if printed, but with no other force and effect. The papers thus referred to are as follows:

1. Exhibit A-1 to the affidavit of Emory S. Land—pp. 337-339
2. Exhibit A-2 to the affidavit of Emory S. Land—pp. 340-692
3. Exhibit C to the affidavit of Emory S. Land—pp. 702-714
4. District Court order permitting transmission of original Exhibits A-1 and A-2 to the affidavit of Emory S. Land to the Court of Appeals as part of the record on appeal—pp. 921-922.

J. HOWARD MCGRATH,
Solicitor General.

CLINTON M. HESTER,
Clinton M. Hester,
Counsel for Respondents R. Stanley Dollar, et al.

By MICHAEL M. KEARNEY,
432 Shoreman Building, Washington, D. C.

Signed at Washington, D. C., this 14th day of June 1946.

U. S. GOVERNMENT PRINTING OFFICE 1946

Supreme Court of the United States

Order allowing certiorari

Filed October 14, 1946

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice BLACK took no part in the consideration or decision of this application.

U. S. GOVERNMENT PRINTING OFFICE: 1946

Motion to record in case No. 207

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Supreme Court of the United States

No. 207—October Term 1946

EMORY S. LAND (CHAIRMAN, UNITED STATES MARITIME COMMISSION), HOWARD L. VICKERY (VICE CHAIRMAN, UNITED STATES MARITIME COMMISSION), ET AL., PETITIONERS

vs.

R. STANLEY DOLLAR, DOLLAR STEAMSHIP LINE, ET AL.

Order on motions to substitute

October 14, 1946

On consideration of the motions filed by the Solicitor General to substitute parties,

It is ordered that Richard Parkhurst be substituted as a party petitioner in the place and stead of Howard L. Vickery, deceased, and that W. W. Smith and Grenville Mellen, present members of the United States Maritime Commission, be added as parties petitioner. Further consideration of the question of eliminating Emory S. Land and Edward Macauley as parties petitioner is postponed to the hearing of the case on the merits.

Mr. Justice BLACK took no part in the consideration or decision of these motions.

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U. S. GOVERNMENT PRINTING OFFICE: 1947